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DERBY DOWNS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Derby Downs

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") for Derby Downs is made on December 11, 1991, by Community Ventures Limited Partnership I a limited partnership ("Developer").

WHEREAS, Developer owns or owns certain interests in certain real property in Chattanooga, Hamilton County, Tennessee, more particularly described in the attached Exhibits A and B and known as Derby Downs, which is to be developed as a residential subdivision.

NOW, THEREFORE, Developer hereby states that the property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the Property. The easements, restrictions, covenants and conditions shall run with the Property and be binding on all parties having any right, title or interest in it, their heirs, successors and assigns, and shall inure to the benefit of each owner.

ARTICLE I -- PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS

Section 1. Existing Property. The real property which is and may be held, transferred, sold, conveyed, used, occupied, mortgaged and/or otherwise encumbered subject to this Declaration is located in Chattanooga, Hamilton County, Tennessee and is more particularly described as follows:

Phase I

BEING Lots 1 through 70 inclusive as shown on Book and Page 46-124-1, 46-124-2 and 46-124-3 of the plat of Derby Downs, of record in the office of the Register of Hamilton County, Tennessee.

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The remaining Phase(s) or sections(s) of Derby Downs shall be laid out and developed in harmony with and contiguous to said Phase I and may consist of the remaining property described in Exhibit B with plats of survey being likewise filed in the office of the Register of Hamilton County, Tennessee, if and when added. Each phase or section, when and if developed by Developer, may likewise be made subject to the covenants, conditions and restrictions contained in this Declaration and made a part hereof in the manner set forth hereinafter and, when added, so noted on the subsequent plat(s) filed and made a part of this Declaration, shall be shared by all owners of the various phases (or sections) of Derby Downs in accordance with the terms of this Declaration when and if said phase(s) are added to this Declaration. Nothing herein contained shall be deemed to be a present restriction upon the property described in Exhibit B or upon the developers rights therein; nor shall anything herein set forth be deemed to be a representation by the developer as to the future development of the said property described in Exhibit B.

Section 2. Additions to Existing Property. Additional real property may become subject to this Declaration in either of the following manners:

(a) Additions in Accordance with a General Plan of Development. As the owner thereof, or if not the owner, with the consent of the owner thereof, Developer shall have the unilateral right, privilege and option, without the approval of the Derby Downs Association (defined in Article III), from time to time and at any time until twenty years from the date of this Declaration, to

subject to the provisions of this Declaration all or any portion of the property described in Exhibits A and B by filing in the Hamilton County, Tennessee Register's Office an amendment annexing such real property. Any such annexation shall be effective upon the filing for record of such amendment unless otherwise provided in the amendment. Developer may assign this right of annexation to any person or entity.

(b) Other Additions. Subject to the consent of the owner thereof, additional real property other than that described in Exhibit A may be made subject to this Declaration by filing an amendment to this Declaration in the Hamilton County, Tennessee Register's Office. An amendment adding such additional property shall require the written consent or affirmative vote of Developer, as long as it owns any part of the property described in Exhibit A or, B or if Developer no longer owns any part of that property, the written consent or affirmative vote of a majority of the authorized voting members of the Derby Downs Association. Any such amendment shall be signed by Developer, if Developer has adopted the amendment, or by the President and the Secretary of the Derby Downs Association, if Developer no longer owns the property described in Exhibits A and B and the Derby Downs Association has adopted the amendment, and in either case, by the owner of the real property being added, and any such amendment shall be effective upon filing, unless otherwise provided in the amendment.

Section 3. Amendment. This article shall not be amended without the written consent of Developer, as long as Developer owns property described in either Exhibit A or Exhibit B.

ARTICLE II -- PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment; Exceptions. Every lot owner shall have a right and easement of enjoyment including, without limitation, the right of vehicular and pedestrian ingress and egress, in and to the common areas and the park easement which shall be appurtenant to and shall pass with the title to every lot. This right and easement shall also be deemed granted to the Derby Downs Association and the lots owners' families, guests, invitees, servants, employees, tenants and contract purchasers. The term "common areas" means and refers to all areas not contained in numbered lots and dedicated roadways on the plat of Derby Downs, and includes the tract marked "Open Area" on the plat referred to in Article I, Section 1, hereof. Developer releases and quitclaims to the Derby Downs Association its right and title to the common areas. A 25' park easement as illustrated on the plat referred to in Article 1, Section 1 herein is also established and deemed granted to the Derby Downs Association and the lot owners, families, guests, etc. The right of enjoyment is subject to the following provisions:

(a) The right of the Derby Downs Association to suspend the voting rights and the accompanying rights of use to such common area of an owner for any period during which any assessment against his lot remains unpaid, and for a period of time for any infraction of its published rules and regulations;

(b) The right of Derby Downs Association to dedicate or transfer all or any part of the common areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Derby Downs Association, and as may be otherwise permitted under existing law and/or governmental regulations; provided, however, that the lot owners' easements of ingress and egress and any public utility easements previously established shall not be affected. Developer may dedicate utility, service or drainage (storm water or otherwise) or water retention pond easements upon, through or under the common areas at its sole discretion so long as there is in existence the Class B membership in Accordance with Article III, Section 2. When Class

B membership ceases, this right of Developer shall automatically pass to the board of directors of the Derby Downs Association; and

(c) No motorized vehicles, including motorcycles, 3-wheel or 4-wheel-type recreational vehicles are permitted on the common areas, except authorized maintenance vehicles and except in areas designated for parking or other vehicles use.

(d) The Derby Downs Association is authorized to adopt rules and regulations for the use of the common areas, including rules concerning hours of operation of any recreational facilities, and such rules and regulations shall be furnished in writing to the lot owners.

Section 2. Derby Downs Association's Right of Entry. The authorized representative of the Derby Downs Association or its board of directors shall be entitled to reasonable access to the individual lots as may be required in connection with the preservation of property on an individual lot in the event of an emergency or in connection with the maintenance of, repairs or replacements within the common areas, or any equipment, facilities or fixtures affecting or serving other lots or the common areas to make any alteration required by any governmental authority; provided, after any such entry the Derby Downs Association shall restore the lot to its former condition.

Section 3. No Partition. Except as is permitted in this Declaration or amendments thereto, there shall be no physical partition of the common areas or any part thereof, nor shall any person acquiring any interest in the Property have the right to judicial partition. This Section does not prohibit the board of directors of the Derby Downs Association from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE III -- Derby Downs ASSOCIATION

Section 1. Membership. Developer and every owner of a lot which is subject to an assessment shall be a member of a maintenance association called the Derby Downs Association, Inc. (the "Derby Downs Association"). Such owner and member shall abide by the Derby Downs Association's Bylaws, Charter recorded in the Hamilton County, Tennessee Register's Office, rules and regulations, shall pay the assessments provided for in this declaration, when due, and shall comply with decisions of the Derby Downs Association's board of directors. Conveyance of a lot (except a conveyance to a trustee under a deed of trust or to a mortgage) automatically transfers membership in the Derby Downs Association without necessity of further documentation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. Classes of Membership. The Derby Downs Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all lot owners, with the exception of Developer, and for so long as there is Class B membership, shall not be entitled to vote. Upon termination of Class B membership, Class A members shall be all lot owners, including Developer for so long as Developer is a lot owner. Each lot owner, at that time, shall be entitled to one vote for each lot owned. Should more than one person own an interest in any lot, all such persons are members; but there may be only one vote cast with respect to such lot. Such vote may be exercised as the lot owners determine among themselves; however, no split vote is permitted.

(b) Class B. The Class B member shall be Developer, and as long as there is a Class B voting membership, Developer shall have the sole voting

power. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(i). When all the lots in Derby Downs, whether in the original real property subject to this Declaration and/or any and all additions hereafter added pursuant to this Declaration, have been fully developed, permanent improvements constructed thereon, and sold to permanent residents;

(ii) January 10, 2010; or

(iii) When, in its sole discretion, Developer so determines.

Section 3. Rights and Obligations of the Derby Downs Association. The Derby Downs Association shall maintain, operate and keep in good repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the common areas, including, without limitation, open spaces, entrance ways, streets, park easements, medians, streetlights, walls, crosswalks, sidewalks, storm drains, basins, landscaping and any recreational facilities located therein. All rights reserved by Developer in this Declaration shall automatically pass to the Derby Downs Association when Class B membership ceases pursuant to Article III, Section 2. The Derby Downs Association shall further:

(a) acquire and be responsible for maintaining liability insurance adequate to insure against all risk to persons and/or property within the common area, together with all risk of loss(es) to improvements therein or thereon;

(b) be responsible and liable for the prompt payment of any and all taxes by any government agency related to the Derby Downs Association and/or the common areas;

(c) be responsible for the maintenance and upkeep of the common area and all the recreational and other facilities located thereon or pertaining to the common areas; and

(d) be responsible and liable for such other obligations and/or duties which may be required by appropriate governmental bodies and/or authorities.

(e) indemnify and protect and hold harmless the developer and any of its owners, directors, shareholders, agents, employees, and so forth, as to any and all risks to persons and property happening or arising or occurring in the common areas.

ARTICLE IV -- ASSESSMENTS

Section 1. Assessments; Creation of the Lien and Personal Obligation. Each lot owner, except Developer, by acceptance of a deed for the lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Derby Downs Association (i) monthly and/or annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as provided in this Article IV. Developer shall have the right and ability, but not the obligation to advance moneys for the maintenance costs of the Derby Downs Association, incurred over and above assessed amounts payable to the Derby Downs Association by the lot owners, until Class B membership in the Derby Downs Association is converted to Class A membership pursuant to Article III, Section 2 (b). When Class B membership in the Derby Downs Association is converted to Class A membership, Developer shall pay assessments to the Derby Downs Association for each lot Developer owns in the same manner and amount as every other lot owner pays assessments.

At such time as the Derby Downs Association has a positive cash flow from normal monthly or annual assessments, after paying all appropriate Association expenses the Derby Downs Association shall, upon request and presentation of evidence of Developer's expenditures by Developer, repay Developer for any amounts advanced by Developer to pay for maintenance costs incurred over and above assessed amounts payable to the Derby Downs Association by lot owners. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments.

(a) The assessments levied by the Derby Downs Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose, or for the use and enjoyment of the common areas, including but not limited to, the cost or repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, payment of taxes assessed against the common areas, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys to represent the Derby Downs Association when necessary, and such other needs as may arise, and for the improvement and maintenance of the common areas and lots.

(b) Developer has or will construct certain recreational facilities on part of the common area owned or to be owned by the Derby Downs Association for the benefit of the lot owners in Derby Downs and the members of the Derby Downs Association. Because Developer has paid for the construction of these recreational facilities, the Derby Downs Association shall execute and deliver to Developer a promissory note in the principal amount of \$100,000, without interest, to repay Developer for a portion of its costs incurred in constructing those recreational facilities. That promissory note shall be secured by a deed of trust on the portion of the common area designated "Open Area" on the plat referred to in Article I, Section 1, of this Declaration. A portion of the assessments provided for in this Article IV, in the amount of \$30.00 per month per lot that is then subject to an assessment, shall be paid by the Derby Downs Association to Developer to pay that promissory note.

(c) Until Class B membership ceases and is converted to Class A membership pursuant to Article III, Section 2 (b), Developer or its nominee shall Administer the assessments and receipts benefiting the Property, as permitted in this Declaration.

Section 3. Maximum Assessment.

(a) Until January 1, 1993, the maximum annual assessment shall be set at a rate not to exceed \$30.00 per month per lot. From and after January 1, 1992, the maximum annual assessment may not be increased each year by more than 10% of the maximum assessment for the previous year without an affirmative vote of two-thirds of each class of members pursuant to the Bylaws.

(b) The board of directors of the Derby Downs Association may fix the annual assessment at an amount not in excess of the maximum. The board of directors shall determine when the assessments shall be paid.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Derby Downs Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common areas, including fixtures and personal property related thereto. Any such assessment shall have the assent of two-thirds of each class of members of the Derby Downs Association that are authorized to vote in accordance with this Declaration or by the Bylaws.

Section 5. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all lots except those owned by Developer during the period when Class B membership exists in the Derby Downs Association, as provided in Section 1 of this Article. The board of directors may at its discretion waive the assessment for any year or part of a year for any lot not occupied as a residence.

Section 6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall begin as to any lot subject to the assessment on the first day of the month next following the date on which title to the lot is conveyed to the owner, subject to the waiver provided in Section 5 of this Article. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year when title to the lot is transferred.

Section 7. Reserves. Upon closing of the conveyance of a lot to a purchaser for occupancy as a residence, such purchaser shall pay to Derby Downs Association an amount equal to two months' assessments, to be placed in the Derby Downs Association's capital replacement reserve account. This reserve assessment shall not be applied against the annual assessment provided for in Section 1 of this Article.

Section 8. Effect of Nonpayment of Assessment; Remedies of the Derby Downs Association. Any assessment not paid within fifteen days of the due date shall be subject to a late charge as determined by the board of directors of the Derby Downs Association. The Derby Downs Association may bring an action at law against the owner personally obligated to pay the assessment, or foreclose the lien against the property, and interest, costs and reasonable attorney fees of such action or foreclosure shall be added to the amount of such assessments. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas or abandonment of his lot. Assessments shall continue to accrue until paid in full, whether or not the member(s) are suspended from use pursuant to this Declaration.

For the purpose of rendering unnecessary court proceedings for the enforcement of said lien in the event of the nonpayment of the assessments, and for the consideration of one dollar paid in cash, receipt of which is acknowledged, the lot owners, their heirs, successors, administrators and assigns, hereinafter in this Section 7 referred to as Trustor, hereby transfer and convey unto Richard Buhrman, as Trustee, his successors and assigns, their respective lot with the appurtenances, estate, title and interest thereto belonging upon the use and trusts set forth in this paragraph.

To have and to hold the property to the Trustee, his successor and assigns, and his successors in trust, forever.

If the Trustor pays the assessments when due, then this trust conveyance shall be of no further force or effect with respect to the Trustor's lot. If the assessments with respect to any lot are not paid promptly when due, this trust conveyance shall remain in full force and effect, and the Trustee, or his successor in trust, is hereby authorized and empowered, upon giving twenty days notice by three publications in any newspaper, daily or weekly, published

in Hamilton County, Tennessee to sell the lot at the front door of the Court House in said County to the highest bidder for cash, at public outcry, free from the right of redemption, statutory or otherwise, homestead, dower and all exemptions of every kind, which are hereby expressly waived; and the Trustee, or his successor in trust, is authorized and empowered to execute and deliver a deed to the purchaser. The Derby Downs Association may bid at any sale under this trust conveyance. The Derby Downs Association may, at any time after default in the payment of any assessment, enter and take possession of said property, and shall only account for the net rents actually received by it. It is further agreed that, in the event the Derby Downs Association fails, before instructing the Trustee to sell the lot, as herein provided, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to him by the Trustee of a deed for said property. In the case of sale hereunder, the proceeds will be applied by the Trustee as follows:

(i) First, to the payment of all costs, charges and expense of executing this conveyance and enforcing said lien as herein provided, including reasonable attorneys' fees and expenses incurred for instituting or defending any litigation which may arise on account of the execution of this conveyance, or the enforcement or the lien;

(ii) Second, to the payment of all taxes which may be unpaid with respect to such lot;

(iii) Third, to the payment of all unpaid assessment with respect to such lot;

(iv) Fourth, the residue, if any, will be paid to the owner(s) of such lot, his order, representatives or assigns;

In the case of the death, absence, inability or refusal to act of the Trustee at any time when action under the foregoing power and trusts may be required or for any other reason, the Derby Downs Association is hereby authorized and empowered to name and appoint a successor to the Trustee by an instrument in writing to be recorded in the Hamilton County, Tennessee Register's Office and the title herein conveyed to the Trustee shall be vested in its successor.

The Derby Downs Association acting on behalf of its members, shall have the power to bid for the lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. The Derby Downs Association may purchase the lot subject to a first mortgage. Where the purchase of a foreclosure lot will result in a ten percent or greater increase in annual assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Derby Downs Association, including a majority of members of each class of membership. During the period owned by the Derby Downs Association, following foreclosure: (i) no right to vote shall be exercised on its behalf, and (ii) no assessment shall be assessed or levied on it. Suit to recover a money judgement for unpaid assessments and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may temporarily suspend the voting rights and any and all other rights of a member who is in default of payment of any assessment after notice.

Section 9. Subordination of the Lien to Mortgages and Deeds of Trust.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any lot shall not affect the assessment lien or liens provided for in the preceding sections. However, the sale or transfer of any lot pursuant to a first mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such

sale or transfer. No sale or transfer shall relieve such lot owner from liability for any assessments thereafter becoming due or relieve such lot from the lien for any assessments thereafter becoming due after such sale or transfer.

ARTICLE V -- USE RESTRICTIONS

Section 1. Primary Use Restrictions. No lot shall be used except for private single family residential purposes. No structure shall be erected, placed or altered or permitted to remain on any lot except one single family dwelling designed for the occupancy of one family (including any domestic servants living on the premises), not to exceed two and one-half stories in height and containing a garage for the sole use of the owner and occupants of the lot.

Section 2. Nuisances. No noxious or offensive trade or activity shall be conducted on any lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

Section 3. Use of Other Structures and Vehicles.

(a) No structure of a temporary character including, without limitation, an outbuilding, trailer, basement, tent, shack, garage, barn or structure other than the main residence erected on a lot shall be permitted on any lot except temporary tool sheds or field offices used by a builder or Developer, which shall be removed when construction or development is completed and no such structure shall at any time be used as a residence, temporarily or permanently.

(b) No trailer, truck, motorcycle, commercial vehicle, camper trailer, camping vehicle or boat shall be parked or kept on any lot at any time unless housed in a garage or basement. No automobile which is inoperable shall be habitually or repeatedly parked or kept on any lot (except in the garage) or on any street in the subdivision. No trailer, boat, truck, or other vehicle, except an automobile, shall be parked on any street in the subdivision for a period in excess of twenty-four hours in one calendar year. No repair of any vehicle shall be performed on any lot or in the common areas, except as permitted by the rules and regulations of the Derby Downs Association and any local law or regulation.

(c) No automobile shall be continuously or habitually parked on any street or in the common areas in the Property.

(d) No flagpoles shall be erected on any lot.

Section 4. Animals. No animals, including reptiles, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic area) may be kept, provided they are not kept, bred or maintained for any commercial or breeding purposes, and provided further, that all local laws, ordinances, and/or regulations are complied with by the owners of the lots and/or pets.

Section 5. Clothes Lines; Fences and Walls; Swimming Pools; Antennae and Receivers/Transmitters.

(a) No outside clothes lines shall be erected or placed on any lot.

(b) No fence or wall of any nature may be extended toward the front or street side property line beyond the front or side wall of the residences. No fence may be extended into any park easement or common area as such is

described on the plat of Phase I. As a "structure" no fence or wall of any nature may be erected, placed or altered on any lot until construction plans are approved in writing by the Developer pursuant to Article VI, Section 1. Fencing material is limited to wood or masonry or other similar product as approved in writing by the Developer.

(c) No swimming pools shall be erected or placed on any lot from the date hereof unless its design and placement are approved in writing by Developer.

(d) No antennae or microwave and other receivers and transmitters (including those currently called "satellite dishes") shall be erected or placed on any lot unless its design and placement are approved by Developer.

Section 6. Duty to Repair and Rebuild.

(a) Each owner of a lot shall, at its sole cost and expense, repair all portions of his residence and lot, keeping the same in condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

(b) If all or any portion of a residence is damaged or destroyed by fire, or other casualty, then the owner shall, with all due diligence, promptly rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its condition immediately prior to the casualty. Alternatively, the lot owner shall completely raze the residence and sod or seed the entire lot until such time as construction of a new residence is begun.

(c) Any failure by a lot owner to comply with the provisions of this Section 6 may be remedied by the Derby Downs Association and the cost thereof charged to the lot owner. The Derby Downs Association shall have a lien on the owner's lot to secure the repayment of such costs, which lien may be enforced as the lien for assessments is enforced.

Section 7. Business; Home Occupations. No trade or business of any kind (and no practice of medicine, dentistry, chiropraxy, osteopathy and other like endeavors) shall be conducted on any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood or be in violation of local laws, ordinances or regulations. Notwithstanding the provisions hereof or of Section 1 of this Article, a new house may be used by the builder thereof for the builder's own office provided said use terminates within eighteen months from completion of the house or upon such additional period of time as may be expressly agreed to in writing by Developer.

Section 8. Signs. No signs for advertising or for any other purpose shall be displayed on any lot or on a building or a structure on any lot, except one sign for advertising the sale thereof, which shall not be greater in area than twelve square feet; provided, however, Developer shall have the right to (i) erect larger signs when advertising the Property, (ii) place signs on lots designating the lot number of the lots, and (iii) following the sale of a lot, place signs on such lot indicating the name of the purchaser of that lot. Further, any such sign shall comply with all local laws, ordinances and/or regulations.

Section 9. Drainage. Drainage of each lot shall conform to the general drainage plans of Developer for the Property. No storm water drains, roof downspouts or ground water shall be introduced into the sanitary sewage system. Connections on each lot shall be made with watertight joints in accordance with all applicable plumbing code requirements.

Section 10. Obligation to Construct or Reconvey. Every lot owner shall, within thirteen months after the date of conveyance of a lot without a dwelling thereon, commence in good faith the construction and diligent pursuit of completion of a single family dwelling approved according to Article VI, Section 1, upon each lot conveyed. If construction does not commence and promptly proceed toward completion within the specified period of time, Developer may elect to repurchase any and all lots on which construction has not commenced for 100% of the purchase price, without interest, of said lot or lots hereunder sold by Developer, in which event the lot owner shall immediately reconvey and deliver possession of said lot or lots to Developer by deed of special warranty. If Developer has not exercised this right to repurchase within three years from the date such right vests in Developer, the Developer's right to repurchase shall cease.

Section 11. Disposal of Trash. No lot shall be used or maintained as dumping ground for rubbish, trash, or garbage. Trash, garbage or other waste shall not be kept except in sanitary containers and out of view from any street or other lot or the common area. The restriction shall not apply during the period of construction of a residence on the lot or adjoining lots.

Section 12. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon, in or under any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon, under or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 13. Flood Plain Management.

(a) No alteration of the natural flood plain stream channels and natural protective barriers which are necessary in the accommodation of flood waters shall be permitted in the areas delineated on the plat referenced in Article I, Section 1 as within the 100 year flood zone.

(b) No filling grading, dredging or any other development which may increase erosion or flood damage is permitted in the areas delineated on the plat referenced in Article I, Section 1 as within the 100 year flood zone.

(c) No construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands is permitted in the areas delineated on the plat referenced in Article I, Section 1 as within the 100 year flood zone.

ARTICLE VI -- ARCHITECTURAL AND LANDSCAPE CONTROL

Section 1. Approval of Construction and Landscape Plans.

(a) No structure may be erected, placed or altered on any lot until the construction plans and building specifications and a plan showing (i) the location of all improvements on the lot; (ii) the grade elevation (including rear, front and side elevations); (iii) the type of exterior material (including proposed paint color); and (iv) the location and size of the driveway and sidewalk (which shall be of exposed aggregate concrete), shall have been approved in writing by the Developer. No house or residence shall be permitted to be moved into Derby Downs and placed or erected on any lot.

(b) In addition to the plans referred to in the previous paragraph, a landscape plan shall be submitted to the Developer for its approval in writing, which plan shall show the trees, shrubs and other plantings. Thereafter, no additional trees, shrubs and other plantings may be placed on

any lots' yard area bordering on the common areas or park easement until a supplementary landscape plan has been submitted to Developer for its approval in writing. Each landscape plan shall include the planting of at least two trees of 2" caliper minimum.

(c) References to "Developer" shall include any entity, person or association to whom Developer may assign the right of approval. References to "structure" in this paragraph shall include any building (including a garage), fence, wall, antennae and microwave and other receivers and transmitters (including those currently called "satellite dishes"), swimming pools, decks, headwalls, and, in fact, any and all improvements upon such lot(s).

Section 2. Building Materials Phase I. The exterior building material of all structures in Phase I shall extend to ground level and shall be either brick, stone, drivit, stone, brick veneer or stone veneer, or a combination of same. However, the Developer may waive this requirement and allow substitute materials such as hardboard or vinyl siding on a case by case basis as long as in the sole discretion and judgement of the Developer these materials do not adversely affect the appearance, aesthetics or property values of the development.

Section 3. Minimum Floor Areas. The following shall be the minimum floor areas for homes to be constructed in Phase I after this instrument is recorded:

(a) The total floor area of a one story house shall be a minimum of 1,600 square feet, exclusive of the garage.

(b) The total floor area of any other house in Phase I shall be a minimum of 1,800 square feet, with a minimum of 1,000 square feet on the ground floor, exclusive of the garage.

Section 4. Setbacks. No structure shall be located on any lot nearer to the front, rear, or side lot line, or the side street line than the minimum building setbacks lines as established in the Chattanooga Subdivision Regulations. Developer may vary the established building lines or permit encroachments into said areas, in its sole discretion, where not in conflict with applicable zoning ordinances and/or regulations.

Section 5. Garages.

(a) Garages, as structures, are subject to prior plan approval under Section 1 hereof. Garages shall either be attached to or connected by a breezeway to the main dwelling unit.

(b) No carport shall be constructed on any lot.

Section 6. Landscaping; Driveways; Trees.

(a) After the construction of a residence, the lot owner shall grade and sod that portion of the lot between the front and street side walls of the residence and the pavement of any abutting streets.

(b) Each lot owner shall promptly finish the driveway and sidewalks with exposed pea gravel concrete at completion of a single family dwelling. The sidewalks shall be three feet wide and four inches thick, constructed of 2500 psi concrete mix and placed along the alignment determined by the developer which shall extend the entire length across the front of each lot.

(c) After construction of a residence, each lot owner shall, unless waived in writing by Developer, install a gas light at a location approved by Developer.

(d) Upon an owner's failure to comply with the provisions of this Section 6, Developer may take such action as necessary to comply therewith, and the owner shall immediately, upon demand, reimburse Developer or other performing party for all expenses incurred in so doing, including reasonable attorney fees, together with allowable statutory interest, and Developer shall have a lien on that lot and the improvements thereon to secure the repayment of such amount. Such lien may be enforced in the same manner and with the same priority that the lien for annual and special assessments may be enforced.

Section 7. Mail and Paper Boxes. The only mail box and/or paper holder authorized or permitted shall be that standard unit approved by Developer and all such units shall be purchased from the Developer and installed by the owner. No other mail box or paper holder shall be placed on any lot.

ARTICLE VII -- GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of these restrictions shall be by proceeding of law or in equity, brought by any owner, by the Derby Downs Association, or by Developer against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration and/or to recover damages. Failure of any owner, the Derby Downs Association, or Developer to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.

Section 2. Severability. Invalidation of any one of these covenants by judgement or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 3. Restrictions Run With Land. Unless canceled, altered or amended under the provisions of this paragraph, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of at least forty (40) years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten years, unless an instrument signed by a majority of the then owners of all lots subject to this Declaration has been recorded agreeing to change these restrictions and covenants in whole or in part. These restrictions may be canceled, altered or amended at any time, if permitted by local law, ordinance and/or regulation, by a written instrument signed by the owners of the lots with 75% of the votes in the Derby Downs Association and recorded in the Hamilton County, Tennessee Register's Office.

Section 4. Amendments to Articles and Bylaws. Nothing contained in this Declaration shall limit the right of the Derby Downs Association to amend, from time to time, its Charter and Bylaws.

Section 5. Non-Liability of the Directors and Officers. Neither Developer nor the directors nor officers of the Derby Downs Association shall be personally liable to the owners for any mistake or judgement or for any other acts or omissions of any nature whatsoever while acting in their official capacity, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The owners shall indemnify and hold harmless Developer and each of the directors and officers and their respective heirs, executors, administrators, successors and assigns in accordance with the Bylaws. This indemnification shall include, without limitation, indemnification against all costs and expenses (including attorney fees, amounts of judgements paid and amounts paid in settlement) incurred in connection with any claim, action, suit or proceeding, whether civil,

criminal, administrative or other. The Derby Downs Association may provide insurance to cover such risks.

(a) The developer and none of the owners or agents or shareholders or directors of the developer will have any personal liability for anything having to do with lots of the subdivision or anything else, or especially the common areas.

(b) If any claim is brought by an owner, the maximum liability and exposure of the developer will be equal to the amount of the net cash proceeds actually received by the developer at the initial sale of the lot now owned by the party that is making the claim.

(c) The liability of the developer whatsoever for any claims shall be limited and asserted only against any remaining property in the development which the developer owns at that time.

Section 6. Sale or Other Disposition of Common Area. The Derby Downs Association shall not dispose of any common open space, by sale or otherwise, except to an organization conceived and established to own and maintain the common open space, without first offering to dedicate the common open space to the City of Chattanooga, and said dedication be approved by the Hamilton County Planning Commission. The conditions of such transfer shall conform to local laws, ordinances and/or regulations and shall be in conformity to the officially recorded development plat(s).

Section 7. Permanent Unrestricted Use. Except as otherwise provided herein and when not in default of any obligation(s) of a member in the Derby Downs Association, all members (lot owners) shall have guaranteed the permanent unrestricted right to utilize the land and facilities owned by the Derby Downs Association as common open space.

Section 8. Subject to Local Laws, Ordinances and/or Regulations. The Derby Downs Association, or any successor organization, shall own and maintain the common open space in accordance with the officially recorded development plat and subject to local laws, ordinances and/or regulations related thereto and be responsible for any and all costs and/or sanctions from deviation from the same and shall indemnify and hold harmless Developer from such deviations and consequences of deviation.

Section 9. Board's Determination Binding. In the event of any dispute or disagreement between any owners relating to the Property, or any questions of interpretation or application of the provisions of this Declaration or the Bylaws, the determination thereof by the Board of Directors of the Derby Downs Association shall be final and binding on each and all such owners, except Developer, for so long as it owns a lot or lots, may veto such determinations relating to lot(s) owned by it or adversely affecting the lot(s) owned by it, in Developer's sole discretion.

WITNESS the signature of Developer by its duly authorized partner as of
December 11, 1991.

COMMUNITY VENTURES, L.P.

By: MARY MEADE, INC.
General Partner

By: Dennis S. Painter President
Dennis S. Painter, President

STATE OF TENNESSEE:
COUNTY OF HAMILTON:

Before, me Martha McMillan, a Notary Public in and for said State and County, duly commissioned and qualified, personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged, himself to be President of Mary Meade, Inc., a Tennessee corporation and the General Partner of Community Ventures, L.P., a Tennessee limited partnership, the within named bargainor; and that he, as the duly authorized President of the said corporate General Partner, being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of the said limited partnership by signing his name as the President of the corporate General Partner.

WITNESS my hand and seal, at office in Chattanooga, Tennessee, on
December 11, 1991.

Martha McMillan My commission expires: 10-18-95

046401

SARAH P. DEFRIESE
REGISTER
HAMILTON COUNTY
STATE OF TENNESSEE

'91 DEC 17 PM 3 06 12/17/91 MISC 60.00 **60.00

BY: R. Linn
DEPUTY
RECPT. # 510726