



# Rarity Bay

ON LAKE TELLICO

*Another Fine Living Experience Offered by Rarity Communities, Inc.*

## MASTER DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS



TABLE OF CONTENTS

ARTICLE 1: DEFINITIONS		
1.1. "Additional Property"	1	
1.2. "Area of Common Responsibility"	1	
1.3. "Association"	1	
1.4. "Board of Directors" or "Board"	2	
1.5. "By-Laws"	2	
1.6. "Charter"	2	
1.7. "Common Area"	2	
1.8. "Common Expenses"	2	
1.9. "Community-Wide Standard"	2	
1.10. "Cost Sharing Agreement"	2	
1.11. "Days"	2	
1.12. "Declarant"	2	
1.13. "Declaration"	2	
1.14. "Design Guidelines"	2	
1.15. "Development Period"	2	
1.16. "DRB"	3	
1.17. "Exclusive Common Area"	3	
1.18. "General Assessments"	3	
1.19. "Governing Documents"	3	
1.20. "Majority"	3	
1.21. "Master Plan"	3	
1.22. "Member"	3	
1.23. "Mortgage"	3	
1.24. "Mortgagee"	3	
1.25. "Neighborhood"	3	
1.26. "Neighborhood Assessments"	3	
1.27. "Neighborhood Association"	3	
1.28. "Neighborhood Expenses"	4	
1.29. "Owner"	4	
1.30. "Person"	4	
1.31. "Private Amenity"	4	
1.32. "Properties"	4	
1.33. "Public Records"	4	
1.34. "Special Assessment"	4	
1.35. "Specific Assessment"	4	
1.36. "Supplemental Declaration"	4	
1.37. "TRDA"	4	
1.38. "TVA"	4	
1.39. "Unit"	4	
		EK M112 PG 324
ARTICLE 2: PROPERTY RIGHTS		
2.1. Common Area	5	
2.2. Private Streets	5	
2.3. Exclusive Common Area	5	
2.4. No Partition.	6	
ARTICLE 3: NEIGHBORHOODS		
		6

ARTICLE 4: MAINTENANCE	7
4.1. Association's Responsibility	7
4.2. Owner's Responsibility	7
4.3. Neighborhood's Responsibility	7
4.4. Standard of Performance	7
ARTICLE 5: INSURANCE	8
5.1. Association Insurance	8
5.2. Owners' Insurance	8
ARTICLE 6: ANNEXATION AND WITHDRAWAL OF PROPERTY	8
6.1. Annexation by Declarant	8
6.2. Annexation by the Owners	8
6.3. Withdrawal of Property	9
6.4. Additional Covenants and Easements	9
6.5. Amendment	9
ARTICLE 7: ASSESSMENTS	9
7.1. Creation of Assessments	9
7.2. Computation of General Assessments	10
7.4. Computation of Neighborhood Assessments	10
7.5. Special Assessments	10
7.6. Specific Assessments	11
7.7. Lien for Assessments	11
7.8. Date of Commencement of Assessments	12
7.9. Failure to Assess	12
7.10. Exempt Property	12
ARTICLE 8: ARCHITECTURAL STANDARDS	12
8.1. General	12
8.2. Architectural Review	13
8.3. Guidelines and Procedures	13
8.4. Approval of General Contractor	14
8.5. Fees and Deposits	14
8.6. Interceptor Tank and Pump	14
8.7. Specific Guidelines and Restrictions	14
8.8. Construction Period	16
8.9. No Waiver of Future Approvals	16
8.10. Variance	16
8.11. Limitation of Liability	16
8.12. Enforcement	16
ARTICLE 9: USE RESTRICTIONS	17
9.1. General	17
9.2. Rules and Regulations	17
9.3. Occupants Bound	17
9.4. Leasing	18
9.5. Residential Use	18
9.6. Occupancy of Unfinished Units	18
9.7. Vehicles	18
9.8. Private Streets	19

9.9.	Animals and Pets	19
9.10.	Nuisance	19
9.11.	Storage of Materials, Garbage, Dumping, Etc.	20
9.12.	Combustible Liquid	20
9.13.	Guns	20
9.14.	Subdivision of Unit	20
9.15.	Sight Distance at Intersections	21
9.16.	Drainage and Grading	21
9.17.	Streams	21
9.18.	Lakes and Other Water Bodies	21
9.19.	Shoreline of Lakes	21
9.20.	Wetlands	22
9.21.	Golf Course Areas	22
9.22.	Timesharing	22

**ARTICLE 10: EASEMENTS**

10.1.	Easements of Encroachment	22
10.2.	Easements for Utilities, Etc.	22
10.3.	Easement for Slope Control, Drainage and Waterway Maintenance.	23
10.4.	Easements to Serve Additional Property.	23
10.5.	Easement for Entry.	24
10.6.	Easements for Maintenance and Enforcement	24
10.7.	Easements for Lake and Pond Maintenance and Flood Water	24
10.8.	Lateral Support	25
10.9.	Easements for Private Amenities.	25
10.10.	Easement for Special Events	27
10.11.	Easement for Greenbelt Maintenance	27
10.12.	Liability for Use of Easements	27

**ARTICLE 11: DECLARANT'S RIGHTS**

11.1.	Transfer or Assignment.	28
11.2.	Development and Sales.	28
11.3.	Improvements to Common Areas.	28
11.4.	Additional Covenants.	28
11.5.	Amendments.	28

**ARTICLE 12: PRIVATE AMENITIES**

12.1.	General.	29
12.2.	Conveyance of Private Amenities.	29
12.3.	View Impairment.	29
12.4.	Golf Course	29
12.5.	Cost Sharing Agreements.	30
12.6.	Architectural Control	30
12.7.	Use Restrictions	30
12.8.	Limitations on Amendments	30
12.9.	Jurisdiction and Cooperation.	31

**ARTICLE 13: GENERAL PROVISIONS**

13.1.	Duration.	31
13.2.	Amendment.	31
13.3.	Severability.	32

BK M112 PG 526

13.4. Non-Merger ..... 32  
 13.5. Grants ..... 32  
 13.6. Cumulative Effect; Conflict ..... 32  
 13.7. Use of the Words "Rarity Bay" ..... 32  
 13.8. Compliance ..... 32  
 13.9. Notice of Sale or Transfer of Title ..... 32  
 13.10. Exhibits ..... 33

EXHIBITS

- "A" Land Initially Submitted
- "B" Additional Property

MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
RARITY BAY

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the date set forth on the signature page hereof by Tellico Lake Properties, L.P., a Tennessee limited partnership.

Declarant is the developer of Rarity Bay on Lake Tellico ("Rarity Bay"), a mixed use community. Rarity Bay has been developed in phases for which several declarations of covenants, conditions and restrictions have been recorded. While different phases or subsections of phases may be subjected to differing declarations, all declarations will be administered by a single property owners association, namely the Association, as that term is defined herein.

Declarant is the owner of the real property described on Exhibit "A," which is attached and incorporated by reference. Declarant hereby declares that all of the property described on Exhibit "A" and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration.

The Association will administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines and will own, operate and maintain the Area of Common Responsibility (as those terms are hereinafter defined).

This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner of any portion of the Properties.

EK #112 PG 328

ARTICLE 1: DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Additional Property": All of that certain real property which is more particularly described on Exhibit "B", which is attached hereto and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 6.

1.2. "Area of Common Responsibility": The Common Area, together with those areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenant, contract, or agreement.

- 1.3. "Association": Rarity Bay Community Association, Inc., a Tennessee nonprofit corporation, its successors or assigns.
- 1.4. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Tennessee corporate law.
- 1.5. "By-Laws": The By-Laws of Rarity Bay Community Association, Inc., as they may be amended.
- 1.6. "Charter": The Charter of Rarity Bay Community Association, Inc., as filed with the Secretary of State of the State of Tennessee.
- 1.7. "Common Area": All real and personal property, including easements, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Members. The term shall also include the Exclusive Common Area, as defined below.
- 1.8. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Members, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.
- 1.9. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout Rarity Bay. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the Design Review Board.
- 1.10. "Cost Sharing Agreement": Any agreement, contract or covenant between the Association and any owner or operator of property adjacent to, in the vicinity of, or within the Properties, including any Private Amenity, for the allocation of expenses that benefit both the Association and the owner or operator of such property.
- 1.11. "Days": Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period automatically shall be extended to the close of business on the next regular business day.
- 1.12. "Declarant": Tellico Lake Properties, L.P., a Tennessee limited partnership, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) "Declarant" hereunder at any one time.
- 1.13. "Declaration": This Master Declaration of Covenants, Conditions and Restrictions for Rarity Bay, as amended or supplemented from time to time.
- 1.14. "Design Guidelines": The Community Design Guidelines, as amended from time to time, and the application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 8.

1.15. "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration, any Additional Property, or any Private Amenity, or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 6.1.

1.16. "DRB": The "Design Review Board" or the "Rarity Bay Design Review Board", as described in Section 8.2.

1.17. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one (1) or more, but less than all, Neighborhoods or Units, as more particularly described in Section 2.3.

1.18. "General Assessments": Assessments to fund Common Expenses, as more particularly described in Sections 7.1, 7.2 and 7.3 of this Declaration and in the By-Laws.

1.19. "Governing Documents": The Declaration, By-Laws, Charter, all Supplemental Declarations, all Design Guidelines, the rules of the Association, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or Common Areas, any of the Units, or any of the above, as each may be amended from time to time.

1.20. "Majority": Those votes of the Owners, Members, or other groups, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.21. "Master Plan": The Master Plan, Land Use Plan for Rarity Bay, as such plan may be amended from time to time, which includes the property described on Exhibit "A" and all or a portion of the Additional Property described on Exhibit "B". Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article 6.

1.22. "Member": A Person subject to membership in the Association pursuant to the By-Laws, specifically excluding, however, the Class "C" members.

1.23. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.24. "Mortgagee": A beneficiary or holder of a Mortgage.

1.25. "Neighborhood": A separately developed area within the Properties, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each single-family attached or detached housing development may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one (1) housing type with other features in common. Neighborhood boundaries may be established and modified as provided in Article 3.

1.26. "Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Article 7.



- 1.27. "Neighborhood Association": Any condominium association or other association having subordinate jurisdiction to the Association.
- 1.28. "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Neighborhood(s).
- 1.29. "Owner": One (1) or more Persons who hold the record title to any Unit, including the Declarant, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.
- 1.30. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.
- 1.31. "Private Amenity": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties which are owned and operated, in whole or in part, by Persons other than the Association for recreational or other purposes. The use of the term "Private Amenity" shall not be construed to imply or require a private club. Private Amenities may be operated as a club membership, daily fee, use fee, public, or private basis. Any Private Amenity shall be designated by the Declarant in its sole discretion, and the Rarity Bay Golf & Country Club and The Rarity Bay Equestrian Center are hereby designated as Private Amenities.
- 1.32. "Properties": The real property described on Exhibit "A" as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 6, and all Common Areas.
- 1.33. "Public Records": The real estate records of Monroe and Loudon Counties, Tennessee, or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.
- 1.34. "Special Assessment": Assessments levied in accordance with Section 7.5.
- 1.35. "Specific Assessment": Assessments levied in accordance with Section 7.6.
- 1.36. "Supplemental Declaration": An instrument filed in the Public Records which subjects Additional Property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to any declaration of covenants, conditions and restrictions and any declaration of condominium.
- 1.37. "TRDA": The Tellico Reservoir Development Agency, or any successor in interest thereof.
- 1.38. "TVA": The Tennessee Valley Authority.

1.39. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, cluster homes and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area, common property owned by any Neighborhood Association, or property dedicated to the public. In the case of a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of an unplatted parcel of land, the parcel shall be deemed to include the number of Units reflected on the Master Plan for such parcel until such time as a subdivision plat or condominium plat is filed with respect to all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph, and any portion not encompassed by such plat shall contain the number of Units determined in accordance with this paragraph.

## ARTICLE 2: PROPERTY RIGHTS

2.1. Common Area. Every Member shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Unit, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association; and
- (c) Any restrictions or limitations imposed by the TVA or TRDA.

Any Member may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. A Member who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. Private Streets. Every Member shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across any private streets and roads within the Properties ("Private Streets"), whether or not such Private Streets are Common Area, for the purpose of ingress and egress to public rights-of-way. The rights and nonexclusive easements granted herein are appurtenant to the title to each Unit, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) The right of the Declarant, so long as the Declarant owns the Private Streets, to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets, provided that the Declarant shall not by the adoption of any rule or regulation bar access of the Members across the Private Streets;
- (c) The right of the Declarant to dedicate all or any part of the Private Streets;

(d) The right of the Declarant to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Members contained in this Section; and

(e) The rights of the Declarant to maintain the Private Streets.

Any Member may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable.

2.3. Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, roads, landscaped medians and cul-de-sacs, ponds, lakes, docks and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners to which the Exclusive Common Areas are assigned either as a Neighborhood Assessment or as a Specific Assessment, as applicable.

Initially, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the deed by which the Common Area is conveyed to the Association, or in any Supplemental Declaration and/or on the subdivision plat relating to such Common Area, provided however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods during the Development Period. Thereafter, a portion of the Common Area may be assigned or reassigned as Exclusive Common Area by the Declarant or upon the approval of the Board and Members holding a Majority of the total votes in the Association, including, if applicable, Members holding a Majority of the votes within the Neighborhood(s) affected.

2.4. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of real property which may or may not be subject to this Declaration.

### ARTICLE 3: NEIGHBORHOODS

The Declarant, in its sole discretion, may establish Neighborhoods within the Properties by designation on Exhibit "A" to this Declaration, a Supplemental Declaration, or a plat. The Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to assign property to a specific Neighborhood, to redesignate Neighborhood boundaries, or to remove property from a specific Neighborhood.

The property within a particular Neighborhood may be subject to additional covenants and/or the Owners may all be members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except in the case of a condominium or otherwise as required by law.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood and, upon the affirmative vote, written consent, or a combination thereof, of Owners holding a Majority of the votes allocated to Units within the Neighborhood, the Association may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate, shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to the By-Laws.

#### ARTICLE 4: MAINTENANCE

4.1. Association's Responsibility. The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility as set forth in the By-Laws

4.2. Owner's Responsibility. Each Owner shall maintain his or her Unit, and all structures, parking areas, sprinkler and irrigation systems, landscaping and other flora, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association, or a Neighborhood Association. Each Owner shall also maintain the driveway and mailbox serving his or her Unit and all landscaping located in the right-of-way immediately adjacent to the Owner's Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 7.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

4.3. Neighborhood's Responsibility. Upon resolution of the Board of Directors, the Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent private streets, and lakes or ponds within the Neighborhood, regardless of ownership or the Person performing the maintenance; provided however, all Neighborhoods which are similarly situated shall be treated the same.

Any Neighborhood Association having responsibility for maintenance within a particular Neighborhood pursuant to additional covenants applicable to such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may perform such responsibilities and assess the costs as a Specific Assessment against all Owners within such Neighborhood as provided in Section 7.6.

4.4. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association, any Member nor any Neighborhood Association shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

## ARTICLE 5: INSURANCE

- 5.1. Association Insurance. The Association shall maintain insurance in accordance with the terms of the By-Laws.
- 5.2. Owners' Insurance. Each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Neighborhood Association (if any) for the Neighborhood in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Owner thereof pursuant to Section 7.6.

Each Owner, in the event of damage to or destruction of structures on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the DRB. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association that owns common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Unit.

## ARTICLE 6: ANNEXATION AND WITHDRAWAL OF PROPERTY

- 6.1. Annexation by Declarant. Until twenty-five (25) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of the Owners, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

- 6.2. Annexation by the Owners. The Owners may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote or written consent of Owners holding a Majority of the votes represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant.

Such annexation shall be accomplished by recording a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon recording unless otherwise provided therein.

6.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

6.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the Owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

6.5. Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

## ARTICLE 7: ASSESSMENTS

7.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four (4) types of assessments:  
(a) General Assessments to fund Common Expenses for the general benefit of all Members;  
(b) Neighborhood Assessments for Neighborhood Expenses benefitting only Owners within a particular Neighborhood or Neighborhoods; (c) Special Assessments; and (d) Specific Assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys fees, shall be a charge and continuing lien upon each Unit against which the assessment or charge is made until paid, as more particularly provided in Section 7.7. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorneys fees, also shall be the personal obligation of the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

7.2. Computation of General Assessments. General Assessments will be computed in accordance with the By-Laws. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

7.3. Maximum General Annual Assessment. The General Assessment for each Owner may not exceed the "Maximum Annual Assessment". The Maximum Annual Assessment is calculated using a base Maximum Annual Assessment for fiscal year 1995 of \$240.00. The Maximum Annual Assessment for each year is increased over the previous year's Maximum Annual Assessment by the greater of five percent (5%) or the Consumer Price Index for the twelve (12) month period ending December 31 of the preceding year using the "All Urban Consumer, U.S. City Average" for "General Summary, All Items" as promulgated by the U.S. Department of Labor and Statistics.

The Board shall not be required to set the General Assessment for any given year at the Maximum Annual Assessment; however, the Board shall not be entitled to set the General Assessment for any given year above the Maximum Annual Assessment for that year without the approval of Members holding sixty-seven percent (67%) of the votes represented at a meeting called for that purpose.

The Maximum Annual Assessment shall not affect the Board's ability to set Neighborhood Assessments, Special Assessments and Specific Assessments, all of which shall be excluded from consideration of the Maximum Annual Assessment.

7.4. Computation of Neighborhood Assessments. Neighborhood Assessments shall be computed in accordance with the terms of the By-Laws.

7.5. Special Assessments. The Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Members, if such Special Assessment is for Common Expenses, or against the Units

within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Special Assessments shall be allocated equally among all Units subject to such Special Assessment. Any Special Assessment shall become effective upon approval as provided in the By-Laws. During the Development Period any Special Assessment shall require the written consent of the Declarant. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

7.6. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, sewer service, landscape maintenance, janitorial service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;
- (b) to cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Common Area assigned to one (1) or more Units, and
- (c) to cover costs incurred in bringing the Unit(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, however, the Board shall give the Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment.

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Charter, the By-Laws, and rules; provided however, the Board shall give prior written notice to the Owners affected, and an opportunity for such Owners to be heard before levying any such assessment.

7.7. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of Tennessee law), late charges in such amount as the Board may establish (subject to the limitations of Tennessee law), costs of collection and reasonable attorneys fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Unit



owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from all Members subject to assessment including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Unit after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

7.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the date which the Unit is conveyed to a Person other than the Declarant. The first annual General Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit. During the Development Period, this provision may not be changed without the consent of the Declarant.

7.9. Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

7.10. Exempt Property. The following property shall be exempt from payment of General Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by the Declarant and included in the Area of Common Responsibility pursuant to the By-Laws;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Property owned by any Neighborhood Association, or by the Owners of a Neighborhood Association as tenants-in-common, for the common use and enjoyment of all Owners within the Neighborhood.

#### ARTICLE 8: ARCHITECTURAL STANDARDS

8.1. General. No exterior structure or improvement, as described in Section 8.7, shall be placed, erected, installed or made upon any Unit or adjacent to any Unit where the purpose of the structure is to service such Unit except in compliance with this Article, and with the prior written approval of the

EK 1112 PG 339

DRB under Section 8.2, unless exempted from the application and approval requirements pursuant to Section 8.3. Structures existing within the Properties as of the date that this Declaration is recorded may be exempted from these application and approval requirements and from the Design Guidelines in the sole discretion of the Declarant.

Any Owner may remodel, paint or redecorate the interior of structures on his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association or to improvements to any Private Amenity. This Article may not be amended during the Development Period without the Declarant's written consent.

8.2. Architectural Review. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the DRB, the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the DRB. The DRB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the DRB in having any application reviewed by architects, engineers or other professionals. The DRB shall have exclusive jurisdiction over all construction on any portion of the Properties. The Declarant retains the right to appoint all members of the DRB who shall serve at the Declarant's discretion. There shall be no surrender of this right except by a written instrument in recordable form executed by Declarant. Upon the surrender of such right, the Board shall appoint the members of the DRB, who shall thereafter serve and may be removed in the Board's discretion.

8.3. Guidelines and Procedures.

EK 1112 PG 340

(a) Design Guidelines. The Declarant has prepared Design Guidelines for the Properties. The Design Guidelines contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one (1) portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, the Board and the DRB may adopt stricter use restrictions, rules and regulations, and Design Guidelines that are applicable to the back yards of Units which are bounded by the lake. The Design Guidelines are intended to provide guidance to Owners and builders regarding matters of particular concern to the DRB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the DRB and compliance with the Design Guidelines does not guarantee approval of any application.

Any amendments to the Design Guidelines shall be prospective only and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the DRB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The DRB shall make the Design Guidelines available to Owners and builders who seek to engage in development or construction within the Properties.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the DRB for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the DRB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time.

Notwithstanding the above, the DRB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

8.4. Approval of General Contractor. The DRB reserves the right to approve or disapprove of general contractors retained by Owners for the construction of improvements on any Unit. The DRB shall provide prospective general contractors with an application and list of criteria utilized by the DRB in making its approval decision. The DRB shall have the right to "grandfather" general contractors who, although not meeting the criteria established by the DRB, for approval, have demonstrated sufficient ability through the previous construction of residences within Rarity Bay. Plan approval shall be withheld until such time as the Owner's general contractor has been approved by the DRB. Approval of a general contractor may be conditioned upon the general contractor entering into an agreement with the DRB to maintain certain insurance coverages required by the DRB, pay construction deposits to ensure completion of a project without damage to the Properties and certain fees determined by the DRB, from time to time. Once approved, a general contractor shall not be required to seek approval as to each residence it requests to construct in Rarity Bay, unless such approval is withdrawn by the DRB. The DRB shall maintain a list of general contractors who are currently approved, and shall provide copies of the list to Owners upon request. Approval by the DRB is not a recommendation by the DRB, the Declarant or the Association of a general contractor, nor is it a warranty or guaranty of the general contractors' work or ability to complete the requested work.

8.5. Fees and Deposits. The DRB may charge fees for design review and providing construction services, which fees shall be subject to change, in the sole discretion of the DRB. In addition, the DRB may require deposits while construction is pending on any Unit to ensure completion without damage to the Properties. The deposit required, if any, shall be set forth in the Design Guidelines.

8.6. Interceptor Tank and Pump. All Owners are required to install an interceptor tank and pump, as set forth in the Design Guidelines, in order to connect to the sewer system providing service to the Properties. The Owner shall be responsible for the cost of the interceptor tank and pump and the installation thereof.

8.7. Specific Guidelines and Restrictions.

(a) Exterior Structures and Improvements. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; installation

EK 1112 PG 341

or replacement of mailboxes; basketball hoops; swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools; docks, piers, or boathouses; gazebos or playhouses; window air-conditioning Units or fans; hot tubs; wells; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

(b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the DRB shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the DRB. The DRB may, but is not required to, adopt specific guidelines as part of the Design Guidelines or rules and regulations which address the following items.

(i) Signs. No sign of any kind shall be erected by an Owner or occupant without the prior written consent of the DRB, except (1) such signs as may be required by legal proceedings; and (2) not more than one (1) professional security sign of such size deemed reasonable by the DRB in its sole discretion. Unless in compliance with this Section, no signs shall be posted or erected by any Owner or occupant within any portion of the Properties, including the Common Area, any Unit, any structure or dwelling located on the Common Area or any Unit (if such sign would be visible from the exterior of such structure or dwelling as determined in the DRB's sole discretion) or from any Private Amenity.

The Declarant and the DRB reserve the right to prohibit signs and to restrict the size, content, color, lettering, design and placement of any approved signs. All signs must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties.

(ii) Tree Removal. Except for trees removed by the Declarant, no trees that are more than six (6) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the DRB; provided however, any trees, regardless of their diameter, that are located within ten (10)-feet of a drainage area, a sidewalk, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the DRB. The DRB may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed.

(iii) Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Unit; (2) one (1) approved decorative post light; (3) pathway lighting; (4) street lights in conformity with an established street lighting program for the Properties; (5) seasonal decorative lights during the usual and common season; or (6) front house illumination of model homes.

(iv) Temporary or Detached Structures. Except as may be permitted by the DRB, no temporary house, dwelling, garage or outbuilding shall be placed or erected on any Unit. Except as provided in Section 9.7(b), no mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Unit as a temporary or permanent dwelling.

EX M112 PG 342

(v) Utility Lines. Overhead utility lines, including lines for cable television, are not permitted with the exception of (1) temporary lines during construction as permitted by the DRB; (2) lines installed by or at the request of Declarant; and (3) lines along Rarity Bay Parkway installed by a public utility company.

(vi) Mailboxes. All dwellings within the Properties shall have mailboxes conforming to postal regulations and the guidelines for mailboxes adopted by the DRB. The DRB may adopt different standards for each Neighborhood.

8.8. Construction Period. After commencement of construction, each Owner shall diligently continue construction to complete such construction in a timely manner. The initial construction of all structures must be completed within one (1) year from commencement unless extended by the DRB in its sole discretion. All other construction shall be completed within the time limits established by the DRB at the time the project is approved.

For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the DRB; (b) a building permit has been issued for the Unit by the appropriate jurisdiction; and (c) construction of a structure has physically commenced beyond site preparation. Completion of a structure shall mean that the residence has all utilities connected and is capable of occupancy.

8.9. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

8.10. Variance. The DRB may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the DRB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

8.11. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, the Association, nor the DRB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the DRB nor any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved general contractors or approved construction or modifications to any Unit. In all matters, the committees and their members shall be defended and indemnified by the Association.

8.12. Enforcement. The Declarant, any member of the DRB, the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this

BK M112 PG 343

Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the DRB, an Owner shall, at its own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, any authorized agent of Declarant, the DRB, or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant and the DRB by any means of enforcement described in the By-Laws. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Neither the DRB nor any member of the foregoing, nor the Association, the Declarant, or their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the DRB from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the DRB.

#### ARTICLE 9: USE RESTRICTIONS

9.1. General. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Unit. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association, business offices for the Declarant or the Association or related parking facilities) consistent with this Declaration and any Supplemental Declaration.

9.2. Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Members and occupants until and unless overruled, canceled, or modified in a regular or special meeting by a vote of Members holding a Majority of the votes in the Association, and, during the Development Period, the written consent of the Declarant.

9.3. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing

EK M112 PG 344

sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

9.4. Leasing. Units may be leased for residential purposes only. All leases shall be on forms approved by the Board and may require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board.

9.5. Residential Use. All Units shall be used for residential purposes of a single family and for ancillary business or home office uses. A business or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; and (e) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

No other business, trade, or similar activity shall be conducted upon a Unit without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant, any broker authorized by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

No garage sale, moving sale, rummage sale, or similar activity shall be conducted upon a Unit without the prior written consent of the Board.

9.6. Occupancy of Unfinished Units. No dwelling erected upon any Unit shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed.

9.7. Vehicles.

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Units unless otherwise approved by the DRB; provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is un-licensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from

EK H112 PG 345

the Properties. No motorized vehicles shall be permitted on pathways or unpaved Common Area except for public safety vehicles authorized by the Board.

(b) Recreational vehicles shall be parked only in the garages, if any, serving the Units or, with the prior written approval of the DRB, other hard-surfaced areas which are not visible from the street or Private Amenities. "Visibility" shall be determined by the DRB in its sole discretion. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, "jet skis" or other watercraft, trailers, other towed vehicles, motorcycles, minibikes, scooters, go-carts, golf carts, campers, buses, commercial trucks and commercial vans. Any recreational vehicle parked or stored in violation of this provision in excess of three (3) Days shall be considered a nuisance and may be removed from the Properties. The Declarant and/or the Association may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any.

(c) Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties.

(d) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt.

9.8. Private Streets. The Private Streets shall be subject to the provisions of this Declaration regarding use of Common Area. Additionally, Members and other permitted users of the Private Streets pursuant to Section 2.2 shall be obligated to refrain from any actions which would deter from or interfere with the use and enjoyment of the Private Streets by other authorized users of the Private Streets. Prohibited activities shall include without limitation obstruction of any of the Private Streets.

9.9. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for commercial purposes without prior written Board approval. All pets shall be reasonably controlled by the owner whenever outside a Unit and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of any pet shall be responsible for all of the pet's actions. Pets shall not be permitted on any golf course, in any lake, or within any Private Amenity except in compliance with conditions established by the owner of such Private Amenity. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties.

9.10. Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

EK 1112 PG 346

No noxious or offensive activity shall be carried on within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a



nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the DRB, shall be located, installed or maintained upon the exterior of any Unit unless required by law.

This Section shall not apply to any development, construction or sales activities conducted or permitted by the Declarant.

9.11. Storage of Materials, Garbage, Dumping, Etc. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff. No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Unit, except during the initial construction period of the improvements to the Unit.

Each Owner shall maintain its Unit in a neat and orderly condition throughout initial construction of a residential dwelling and not allow trash and debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Unit shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines. Each Owner shall keep roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times. Trash and debris during initial construction of a residential dwelling shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Units and shall not be buried or covered on the Unit. Any Unit on which construction is in progress may be policed prior to each weekend and during the weekend, all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Owners shall remove trash and debris from the Unit upon reasonable notice by Declarant in preparation for special events.

9.12. Combustible Liquid. There shall be no storage of gasoline, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the DRB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

9.13. Guns. The discharge of firearms on the Properties is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop any such discharge.

9.14. Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed after a subdivision plat including such Unit has been approved and filed in the Public Records without the Declarant's prior written consent. Declarant, however, hereby expressly reserves the right to replat any Unit or Units which it or any builder owns, with the written prior consent of the Owner of the Unit or Units affected. Any such division, boundary line change, or replating shall not be in violation of the applicable subdivision and zoning regulations, if any.

9.15. Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped and improved so as to permit safe sight across such areas. No fence, wall, hedge or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem.

9.16. Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Unit. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Unit. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties or any Private Amenities with excessive water flow. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Units. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Unit.

(d) Use of any areas designated as "drainage easement areas" on any recorded subdivision plat of the Properties, shall be subject to strict prohibitions against encroachment of structures into, over or across the drainage easement areas, and the right of the Declarant to enter upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any declaration of easements, notwithstanding approval of the landscaping as set forth in Article 8.

(e) No Person shall alter the grading of any Unit without prior approval pursuant to Article 8 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

9.17. Streams. No streams which run across any Unit may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such rights as provided in Article 10.

9.18. Lakes and Other Water Bodies. All lakes, ponds, and streams within the Properties, shall be used only in accordance with such rules and regulations as may be adopted and published by the Board. Swimming, boating, fishing, and other active uses of lakes or other bodies of water within the Properties shall be prohibited. This prohibition shall be inapplicable to Lake Tellico. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within or adjacent to the Properties. Except as designated by the Declarant, no trails or pathways shall be established along the perimeter of any lake or pond.

9.19. Shoreline of Lakes. Owners, as well as their families, tenants, guests, invitees, and pets, shall be obligated to refrain from any actions which would erode or damage the shoreline of any lake.

EK H112 PG 348

9.20. Wetlands. All areas designated on a recorded plat as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. Prior to any alteration of a Unit, the Owner shall determine if any portion thereof meets the requirements for designation as a regulatory wetland. If approved, the Association may maintain boardwalks and fishing docks, over, around, and in such wetlands. Notwithstanding anything contained in this Section, the Declarant, the Association, and the successors, assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

9.21. Golf Course Areas. Owners, as well as their families, tenants, guests, invitees, and pets, shall refrain from any actions which would distract from the playing qualities of any golf course adjacent to the Properties. Such prohibited activities shall include, but shall not be limited to, burning materials where the smoke will cross the golf course property, maintenance of dogs or other pets which interfere with golf course play due to their loud barking or other actions, playing of loud radios, televisions, stereos or musical instruments, running, bicycling, skateboarding, walking or trespassing in any way on the golf course property, picking up balls or similar interference with play. In addition, no Person shall, by virtue of this Declaration, have any right to use any portion of any golf cart path system, including any portion thereof which may be situated upon Common Area, without the prior written approval of the owner of such golf course. This covenant is for the benefit of any golf course adjacent to the Properties and the owner thereof and persons playing golf on said golf courses and shall be enforceable by the owner of such golf course.

9.22. Timesharing. No Unit shall be made subject to or be operated as a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years; provided however, the Declarant may exempt certain Units or Neighborhoods from this prohibition and by Supplemental Declaration create a timesharing, fraction-sharing, or similar program and supplement, create exceptions to, or modify the terms of this Declaration as it applies to such Units or Neighborhoods in order to reflect the different character and intended use of such property.

## ARTICLE 10: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members and the owners of any Private Amenities, and their successors-in-title.

10.1. Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Units, between each Unit and any adjacent Common Area, between Common Area and any adjacent Private Amenity, and between each Unit and any adjacent Private Amenity due to the unintentional placement or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

10.2. Easements for Utilities. Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; lakes, ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, electric company, telephone company, and natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself and its designees non-exclusive, perpetual, reciprocal, appurtenant, easements, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit, and except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding or intending to hold an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

10.3. Easement for Slope Control, Drainage and Waterway Maintenance. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself, the owner of any Private Amenity and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Unit for the purposes of:

- (a) controlling soil erosion, including grading and planting with vegetation any areas of any Unit which are or may be subject to soil erosion;
- (b) drainage of natural or man-made water runoff from any portion of the Properties or any Private Amenity;
- (c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Unit or Common Area;

- (d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and
- (e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties or any Private Amenity.

10.4. Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation the owners of Private Amenities, over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property. Declarant further agrees that if the easement is exercised for permanent access to the Additional Property and such property or any portion thereof benefitting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such property.

10.5. Easement for Entry.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association to enter upon any Unit for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owners. This easement includes the right to enter any Unit to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

(b) Declarant hereby reserves for itself and grants to the Association, to the relatives or descendants of any deceased person in any cemetery or burial ground that is located within the boundary of the Properties, and to any persons seeking access to any cemetery or burial ground for academic or historical purposes, a nonexclusive, perpetual easement of ingress and egress over such portions of the Common Area as are necessary for such access.

10.6. Easements for Maintenance and Enforcement. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association to enter all portions of the Properties, including each Unit, to (a) perform its maintenance responsibilities under the By-Laws, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Unit shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. Entry under this Section shall not constitute a trespass.

The Association also may enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys fees, may be assessed against the violator as a Specific Assessment.

10.7. Easements for Lake and Pond Maintenance and Flood Water. Declarant reserves, creates, establishes, promulgates and declares for itself and its successors, assigns, and designees, the owners of any Private Amenity and the Association the non-exclusive, perpetual, reciprocal, appurtenant right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps and irrigation systems in order to provide water for the irrigation of any of the Area of Common Responsibility or any Private Amenity; (b) draw water from such sources for purposes of irrigation; (c) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (d) remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any lake, pond, stream, or wetland to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves, creates, establishes, promulgates and declares for itself and its successors, assigns and designees, and the Association the non-exclusive, perpetual, reciprocal, appurtenant right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within fifty (50) feet of lake beds, ponds, streams and wetlands in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; (d) disturb existing landscaping; and (e) pile dirt and plant materials. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. All affected areas shall be restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of any construction or maintenance activities authorized in this Declaration. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (a) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (b) to define the limits of any such easements.

10.8. Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Unit, and any improvement which contributes to the lateral support of another portion of the Common Area, of another Unit, or of a Private Amenity shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

10.9. Easements for Private Amenities. Declarant reserves, creates, establishes, promulgates and declares for the owners of any Private Amenity the following non-exclusive, perpetual, reciprocal, appurtenant easements which shall benefit the Private Amenity.

(a) Every Unit and the Common Area and the common property of any Neighborhood Association adjacent to any Private Amenity are burdened with an easement permitting golf balls unintentionally to come upon such Common Area, Units or common property of a Neighborhood and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Unit to retrieve errant golf balls; provided however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from any activity relating to a Private Amenity, including but not limited to, any errant golf balls or the exercise of this easement: the Declarant, or any successor Declarant; the Association or its Members (in their capacity as such); the owner(s) of the Private Amenities or their successors, successors-in-title, or assigns; any builder or contractor (in their capacities as such); any officer, director, member, manager, or partner of any of the foregoing, or any officer, director, member or manager of any partner of any of the foregoing.

(b) The owner(s) of the Private Amenities, their respective successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Area and any Unit, lying reasonably within range of golf balls hit from the golf course within such Private Amenity.

(c) The owner of any Private Amenity within or adjacent to any portion of the Properties, its agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Area reasonably necessary to the operation, maintenance, repair and replacement of the Private Amenity.

(d) There is hereby established for the benefit of the Private Amenities and their members (regardless of whether such members are Members of the Association), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel between the entrance to the Properties and the Private Amenities and over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenities. Without limiting the generality of the foregoing, members of the Private Amenities and guests and invitees of the Private Amenities shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after special events, tournaments and other similar functions held by or at the Private Amenities to the extent that the Private Amenities have insufficient parking to accommodate such vehicles.

(e) Any portion of the Properties immediately adjacent to the Private Amenities are hereby burdened with a non-exclusive easement in favor of the adjacent Private Amenities for overspray of water from the irrigation system serving the Private Amenities. Under no circumstances shall the Association or the owner(s) of the Private Amenities be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(f) The Declarant hereby reserves for itself, its successors and assigns, and may assign to the owner(s) of the Private Amenities, an easement and all rights to draw water from the lakes and ponds within or adjacent to the Properties for purposes of irrigation of the Private Amenities and for access to and the right to enter upon the lakes and ponds within or adjacent to the Properties, if any, for installation and maintenance of any irrigation systems.

(g) Any Private Amenity may include an extensive system of paths for use by pedestrians, golf carts and maintenance vehicles. To the extent such paths are not located on the Private Amenity, Declarant hereby reserves a nonexclusive easement appurtenant to the Private Amenity on, over, under and across the Properties as reasonably necessary for the installation, maintenance, repair, replacement, reconstruction, use and enjoyment of such paths; provided however, no path may encroach onto any Unit more than ten (10) feet nor onto any Common Area (excluding the private streets) more than fifteen (15) feet. The owner(s) of the Private Amenities shall be solely responsible for maintaining such paths at its sole cost and expense, including those portions which are located on a private street, a Unit, or Common Area. The aforesaid easements are reserved for the benefit of the owner(s) of the Private Amenities, and their respective employees, contractors, managers, agents, vendors, licensees, invitees, successors, assigns and grantees and shall be appurtenant to the Private Amenity.

10.10. Easement for Special Events. Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive reciprocal, appurtenant easement over the Common Area for the purpose of conducting educational, cultural, entertainment, or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. The exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

10.11. Easement for Greenbelt Maintenance.

(a) The Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon greenbelts, buffer zones and nondisturbance areas located within the Area of Common Responsibility to remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be automatically transferred to the Association at the expiration of the Development Period or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of greenbelt, buffer zone or non-disturbance area to the extent reasonably necessary to exercise their rights under this Section.

(b) Encroachment of structures into, over, or across greenbelts, buffer zones and non-disturbance areas shown on any recorded subdivision plat of the Properties is strictly prohibited. Landscaping in these areas is subject to removal in the reasonable discretion of Declarant in the ordinary course of maintenance of these areas. Any landscaping permitted shall be installed in conformance with Article 8 herein. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements.

(c) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

10.12. Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, including without limitation the owner(s) of any Private Amenities, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.



## ARTICLE 11: DECLARANT'S RIGHTS

280

11.1. Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

11.2. Development and Sales. The Declarant and brokers authorized by Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, such as sales activities, tournaments, charitable events, and promotional events, and restrict Owners from using the Common Area during such activities. The Declarant and authorized brokers shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant and brokers authorized by Declarant may establish within the Properties, including any meeting hall, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, including, but not limited to, business offices, signs, model Units, tents, sales offices, sales centers and related parking facilities. Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant and authorized brokers shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

11.3. Improvements to Common Areas. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

11.4. Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 6.4, may conflict with the Declaration, By-Laws or Charter.

11.5. Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines made during the Development Period shall be effective without prior notice to and the written consent of the Declarant. This Article may not be amended without the written consent of the Declarant.

## ARTICLE 12: PRIVATE AMENITIES

12.1. General. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements.

12.2. Conveyance of Private Amenities. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant, the Association, any builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owners of the Private Amenities. Further, the ownership or operation of the Private Amenities may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one (1) or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association, any Neighborhood Association, or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

12.3. View Impairment. Neither the Declarant, the Association, nor the owners of any Private Amenities, guaranties or represents that any view over and across any Private Amenity from Units will be preserved without impairment. The owner of any Private Amenity shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping or to install improvements or barriers (both natural and artificial) to the Private Amenities from time to time. In addition, the owner of any Private Amenity which includes a golf course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees, landscaping, bunkers, fairways and greens, improvements and barriers (both natural and artificial) from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner acknowledges that any view of a Private Amenity which the Unit may enjoy as of the date of the purchase may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) on the Private Amenity.

EK M112 PG 356

12.4. Golf Course. Each Owner acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments include: (a) the risk of damage to property or injury to persons and animals from golf balls which are hit onto a Unit or other portion of the Properties or arising from the design, construction, operation, maintenance and/or use of the golf course; (b) the entry by golfers onto an Owner's Unit or other portion of the Properties utilized by the golfer to retrieve golf balls and/or other acts or omissions of persons using the golf course; (c) overspray in

connection with the watering of the roughs, fairways and greens on the golf course; (d) noise from golf course maintenance and operation equipment (including, without limitation, compressors, blowers, mulches, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously); (e) odors arising from irrigation and fertilization of the turf situated on the golf course; (f) disturbance and loss of privacy resulting from motorized golf car traffic and golfers; and (g) the existence of water hazards, ponds, and/or lakes on the golf course. Additionally each Owner acknowledges that pesticides and chemicals may be applied to the golf course throughout the year and that reclaimed water, treated waste water or other sources of non-potable water may be used for irrigation of the golf course.

Each Owner hereby assumes such risks of owning property adjacent to a golf course and forever waives and relinquishes, and agrees not to institute any action or suit at law or in equity nor to institute or prosecute, any claim, demand or compensation against Tellico Lake Properties, LP, the Declarant, or any successor Declarant; the Association or its Members (in their capacity as such); the owner(s) of the Private Amenities or their successors, successors-in-title, or assigns; any builder or contractor (in their capacities as such); any officer, director, member, manager, or partner of any of the foregoing for or on account of any damages, loss, or injury either to person or property, or both, resulting directly or indirectly from the design, construction, operation, maintenance and/or use of the golf course. Each Owner hereby agrees to take any necessary steps to maintain adequate hazard and other insurance policies to protect such Owner and such Owner's family, guests, invitees, agents and employees against all such risks associated with the golf course.

12.5. Cost Sharing Agreements. The Association may enter into a contractual arrangement or Cost Sharing Agreement with any Private Amenity obligating the Private Amenity or the Association to contribute funds for, among other things, shared property or services and/or a higher level of Common Area maintenance.

12.6. Architectural Control. Neither the Association, nor any committee thereof, shall approve or permit any construction, addition, alteration, change, or installation on or to any portion of the Properties which is adjacent to, or otherwise in the direct line of sight of any Private Amenity without giving the Private Amenity at least fifteen (15) Days prior written notice of its intent to approve or permit the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have fifteen (15) Days to approve or disapprove the proposal in writing delivered to the appropriate committee or Association, stating in detail the reasons for any disapproval. The failure of the Private Amenity to respond to the notice within the fifteen (15) day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Area.

12.7. Use Restrictions. Upon request of the owner of any Private Amenity, the Association shall enforce its use restrictions and rules against any Owner or occupant violating such regulations within such Private Amenity, including but not limited to the exercise of the Association's self-help rights for violation of sign and pet restrictions.

12.8. Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Private Amenity, may be made without the written approval of the owner(s) of the affected Private Amenity. The foregoing shall not apply, however, to amendments made by the Declarant.

12.9. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the Private Amenities shall cooperate to the maximum extent possible in the operation of the Properties and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Association shall have no power to promulgate use restrictions or rules affecting activities on or use of the Private Amenities without the prior written consent of the owners of the Private Amenities affected thereby.

#### ARTICLE 13: GENERAL PROVISIONS

13.1. Duration. Except as otherwise limited by Tennessee law, this Declaration shall have perpetual duration. If Tennessee law limits the period during which covenants may run with the land, then this Declaration shall automatically be extended at the expiration of such period for successive periods of ten (10) years each unless an instrument signed by Owners holding two-thirds (2/3) of the votes allocated to Units subject to this Declaration is recorded, agreeing to change the covenants in whole or in part. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

#### 13.2. Amendment.

(a) By Declarant. Until the end of the Development Period, the Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

(b) By Owners. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners holding sixty-seven percent (67%) of the votes allocated to Units subject to this Declaration and, during the Development Period, the written consent of the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

284

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

13.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

13.4. Non-Merger. Notwithstanding the fact that Declarant is the current owner of a portion of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual Unit Owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

13.5. Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted in this Declaration.

13.6. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and declarations applicable to any Neighborhood. The Association may, but shall not be required to, enforce the covenants, conditions, and provisions applicable to any Neighborhood; provided however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provisions of any charter, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, the charter, the By-Laws, this Declaration, and use restrictions and rules of the Association shall prevail over those of any Neighborhood. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

13.7. Use of the Words "Rarity Bay". No Person shall use the words "Rarity Bay" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Members of the Association may use the words "Rarity Bay" in printed or promotional matter where such terms are used solely to specify that particular property is located within Rarity Bay and the Association and any other community association located on Rarity Bay shall be entitled to use the words "Rarity Bay" in its name.

13.8. Compliance. Every Owner and occupant of any Unit shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity.

13.9. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a Unit shall give the Board at least seven (7) Days prior written notice of the name and address of the

purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

13.10. Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 15<sup>th</sup> day of October, 1998.

TELLICO LAKE PROPERTIES, L.P.  
a Tennessee limited partnership

By: TELLICO COMMUNITIES, INC.  
Its: General Partner

By: [Signature]  
Michael L. Ross, President

STATE OF TENNESSEE  
COUNTY OF Blount

Before me, the undersigned authority, a Notary Public in and for said State and County, personally appeared Michael L. Ross, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the President of Tellico Communities, Inc., the General Partner of Tellico Lake Properties, L.P., the within named Declarant, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporations by himself as such President.

Witness my hand and seal, at office, this 15<sup>th</sup> day of October, 1998.

[Signature]  
Notary Public

My Commission Expires 9-6-2000.

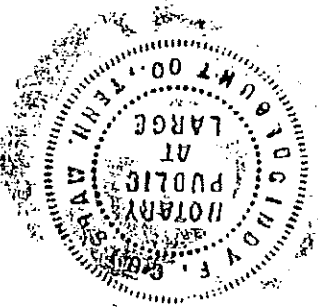


EXHIBIT "A"

Land Initially Submitted

ALL THOSE TRACTS or parcels of land lying and being in the 4<sup>th</sup> District of Loudon County, Tennessee, being more particularly described on that certain final plat for Phase VI, Sections 1, 2 and 3, Rarity Bay Subdivision, dated November 10, 1997, and recorded in Plat Cabinet D, Slides 71 and 72, Office of the Loudon County, Tennessee Register.

EXHIBIT "B"

Additional Property

ALL THOSE TRACTS or parcels of land lying and being in Loudon County and/or Monroe County, Tennessee.

State of Tennessee, County of MONROE  
Received for record the 30 day of  
OCTOBER 1998 at 2:48 PM. (REC# 90893)  
Recorded in Book M112 Pages 323- 362  
Notebook 43 Page 232  
State Tax \$ .00 Clerks Fee \$ .00,  
Recording \$162.00, Total \$ 162.00,  
Registrar of Deeds MILDRED A ESTES

STATE OF TENNESSEE LOUDON COUNTY REGISTER'S OFFICE

THIS INSTRUMENT RECEIVED AT 3:00 O'CLOCK P M., OF THE 14 DAY OF Oct, 1998  
DULY CERTIFIED AND REGISTERED IN SAID OFFICE IN BOOK NO. M112 PAGE 248  
AND NOTED IN BOOK NO. V PAGE 232 STATE TAX PAID \$     

See: \$ 162.00 Bonnie Wear REGISTER

Exhibit "B"  
Page 1 of 1

BK M112 PG 362



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