

This instrument prepared by:  
Reliance Title Agency, Inc.  
28 Square, Suite 100  
Jasper, TN 37347

***DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS***

**THIS DECLARATION**, made this the 3rd day of June 2008, by **STONECLIFT, LLC**, hereinafter referred to as the (Declarant).

**RECITALS**

1. Declarant is the Owner and Developer of a gated subdivision hereafter known as **"STONECLIFT"**.
2. Declarant is developing said community as a part of a common master plan of development, and intends to establish a residential community with streets, utilities, recreational facilities, and other common facilities for the use and benefit of the present and future owners of **STONECLIFT**.
3. For the benefit and protection of Declarant and owners of property in the development, and in order to provide for the preservation of property values in the community, and the establishment and maintenance of the streets, utilities, and the recreational and common facilities, Declarant intends to execute and record this instrument of record in the Register's Office of Marion County, Tennessee, so as to provide a framework from which different sections of the development may hereafter be subjected to this Declaration and to further subject such sections, to other restrictions, easements, and the like, as may be pertinent to such use.
4. **STONECLIFT, LLC, a Tennessee limited liability company**, organized and existing under and by virtue of the law of the State of Tennessee, with its principal office located in Marion County, Tennessee, joins in this Declaration, intending to bind itself to perform certain functions as hereinafter set forth, and to exercise the powers and duties as provided herein.

**WITNESSETH:**

**NOW, THEREFORE**, Declarant declares that, except as may otherwise be provided herein, any section of the development will be transferred, sold, conveyed, and occupied, subject at all times to the covenants, restrictions, easements, liens and charges, collectively referred to as (Covenants and Restrictions), hereinafter set forth, if and when an identifiable description of such area is subjected to this Declaration by an instrument in writing, signed by Declarant and placed of record in the Register's Office of Marion County, Tennessee.

## ARTICLE I – Definitions

The following words, when used in this Declaration, shall have the following meanings:

- Section 1.** “Architectural Control Committee” hereafter (ACC), shall mean and refer to the Architectural Control Committee appointed by the Board of Directors of Stoneclift, LLC, pursuant to Article VII, infra.
- Section 2.** “Assessments” or “Common Assessments”, shall mean and refer to the actual and estimated expenses of operating the Association and the Properties, including any reasonable reserve and capital expenses, all as may be imposed hereunder or found to be necessary and appropriate by the Board, pursuant to this Declaration, the Bylaws and Charter.
- Section 3.** “Association” shall mean and refer to Stoneclift Property Owners Association, Inc., a Tennessee non-profit, non-stock membership corporation incorporated under the laws of the State of Tennessee, its successors and assigns.
- Section 4.** “Board of Directors” or “Board” shall mean and refer to the elected body of the Association having its normal meaning under the Tennessee Non-profit Corporation Act and other governing law.
- Section 5.** “By-Laws” shall mean and refer to those Bylaws of the Association, which govern the administration and operation of the Association, as the same may be amended, from time to time.
- Section 6.** “Charter” shall mean and refer to the Charter of Stoneclift, LLC, on file with the Secretary of State of the State of Tennessee, as same may be amended, from time to time.
- Section 7.** “Common Area” shall mean all real property, including the improvements thereto and personal property thereon owned by, or hereafter conveyed to the Association to be devoted to the common use and enjoyment of the Members of the Association.
- Section 8.** “Contractor” or “Approved Contractor” shall mean and refer to the residential approved by Declarant and Association to construct detached residential structures as set out in Article VII, infra.
- Section 9.** “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions, and any Supplementary Declaration filed hereto, as this Declaration may, from time to time, be amended in accordance with its terms.
- Section 10.** “Development Period” shall mean and refer to that period of time commencing on the date this Declaration is recorded in the Register’s Office, Marion County, Tennessee, and extending through the earlier of (i) the date at which time the number of votes of Class “A” memberships (as described in Article III, infra) is equal to the number of votes of Class “B” memberships, or (ii) January 1, 2017.

- Section 11.** “Family” shall mean an adult or married couple and their “dependents”, if any, as defined under current federal income tax regulations.
- Section 12.** “Living Unit” shall mean and refer to any structure or portion thereof designed and intended for use and occupancy as a residence by a single family, and includes, without limitation, a house or patio home.
- Section 13.** “Lot” shall mean and refer to the plots of land so designated on plats to be recorded in the Register’s Office of Marion County, Tennessee. For all purposes hereunder, it shall be understood and agreed that Declarant shall be the owner of all said lots, save and except only those particular lots, which Declarant conveys in fee by recordable deed from and after the date hereof, with the exception of the Stoneclift Property Owners Association, Inc., Common Area.
- Section 14.** “Member” or “Members” or “Membership” shall mean and refer to each and all of the members of the Association and includes, subject to the terms and conditions hereof, the Declarant.
- Section 15.** “Member in Good Standing” shall mean and refer to a Member, who is not delinquent with respect to the payment of any assessments, fees or other charges owing to the Association, and who is otherwise not in violation of any provision of this Declaration, the Bylaws or Rules and Regulations of the Association.
- Section 16.** “Mortgage” shall mean and refer to a mortgage, deed to secure debt, deed of trust, installment sales contract or contract for deed, or to any first priority mortgage, deed to secure debt or deed of trust.
- Section 17.** “Mortgagee” shall mean and refer to a beneficiary, grantee or holder of a Mortgage. A “First” Mortgagee” is the beneficiary, grantee or holder of a First Mortgage.
- Section 18.** “Mortgagor” shall mean and refer to the grantor of a Mortgage.
- Section 19.** “Owner” shall mean and refer to the record owner, whether one (1) or more persons, of any lot or living unit, or other tract or parcel of land located within the Properties made subject to this Declaration, or, in the case of a contract for deed or installment sales contract, the purchaser under such contract for deed or installment sales contract. The term “Owner” shall not include any person holding such interest solely as security for the payment of satisfaction of an obligation; provided, however, that the purchaser at a foreclosure or other forced sale shall be deemed an Owner. The term “Owner” shall include the Declarant and Declarant is the initial Owner of any lot created by this Declaration.
- Section 20.** “Person” shall mean and refer to a natural person, a corporation, a partnership, a limited liability company, trustee, or other legal entity.

- Section 21.** **“Properties”** shall mean and refer to the properties set out and described on Exhibit “A” attached hereto and to such additional property or other properties as are made subject to this Declaration in accordance with the terms hereof. Properties shall also include the Common Area.
- Section 22.** **“Reserved Properties”** shall mean and refer to those areas so designated now or in the future on any Subdivision Plat for the Properties.
- Section 23.** **“Rules and Regulations”** shall mean and refer to those Rules and Regulations as promulgated by the Board of Directors or the Membership of the Association, pursuant to this Declaration and the By-laws.
- Section 24.** **“Single Family Detached Structure”** shall mean and refer to any building intended for use as a Living Unit located on a separate parcel of land.
- Section 25.** **“Single Family Lot”** shall mean and refer to any Lot or area of Lots so designated on any recorded Subdivision Plat for the Properties.
- Section 26.** **“Subdivision Plat(s)”** shall mean and refer to any Subdivision Plat or other plat of the Properties filed of record with the Office of the Register of Deeds for Marion County, Tennessee.
- Section 27.** **“Supplemental Declaration”** shall mean and refer to a declaration of covenants, conditions and restrictions which, from and after the date of recording this Declaration, subjects designated additional property to this Declaration. Such Supplemental Declaration may contain supplemental covenants and restrictions to reflect the different character of an area, so long as such complementary additions and modifications shall be consistent with and comply with the covenants and restrictions set forth herein; provided, however, nothing herein shall prohibit a Supplemental Declaration from having additional or more restrictive covenants or restrictions, which are unique to the properties then being subjected to the Supplemental Declaration.
- Section 28.** **Timesharing Prohibited.** The concept of timesharing or interval ownership in Stoneclift is prohibited.

## **ARTICLE II - Property Subject To This Declaration**

- Section 1.** **Description of Property.** Declarant is developing this property in phases as a residential community. The Living Units permitted herein shall consist of single family lots. The real property, which is subject to this Declaration, consists of approximately 225 acres situated in Marion County, Tennessee, and now owned

- Section 1.**     **Description of Property (cont.).** by Stoneclift, as evidenced by the Warranty Deed recorded in the Register of Deeds Office of Marion County, Tennessee at Book \_\_\_\_\_, Page \_\_\_\_\_. For the benefit and protection of the Declarant and the persons who shall become owners of lots in Stoneclift, Phase 1 and 2, Declarant by these presents, and by the execution of this instrument, subjects the lots in Stoneclift, Phase 1 and 2, of record as set forth above, to the Declaration of Covenants and Restrictions. The lots in Stoneclift, Phase 1 and 2, shall also be subject to all matters shown on the plat of Stoneclift, Phase 1 and 2, including utility, drainage, pedestrian and road right-of-way easements and setback requirements. A copy of the preliminary plat setting forth the “properties”, for Phase 1 and 2 is attached hereto as Exhibit “A”.
- Section 2.**     **Excluded Properties.** Declarant may acquire additional property adjacent to and in the vicinity of the property encompassed in Stoneclift, Phase 1 and 2. The Developer reserves the right to develop said additional property at its sole option and discretion. Additional property may, at Declarant’s sole option, be brought within the plan of this Declaration by a Supplemental Declaration, which may contain supplementary and complementary covenants and restrictions applying to such property. Declarant shall not be obligated to bring any additional property within the plan of this Declaration, and no implied restrictions or implied negative reciprocal easements shall be created as to any such additional property not encompassed within the plat of Stoneclift, Phase 1.
- Section 3.**     **Reserved Properties.** Any area upon a plat covered by this Declaration or any Supplemental Declaration designated as “Reserved Properties” shall remain the privately owned and sole and exclusive property of Declarant, and neither this Declaration, nor any Supplemental Declarations, nor the plats in connection with the same, shall in any way apply to such “Reserved Properties”, unless at a later time, same shall be included under the provisions of the Declaration or a Supplemental Declaration as provided herein.
- Section 4.**     **Addition to Property.** Declarant shall have the right, but not the obligation, to bring within the plan of this Declaration any properties developed in Marion County, Tennessee. Declarant shall retain, reserve and have the sole option of declaring what stage of development, if any, said property may be in when subject to this Declaration; provided, however, that any additions shall be committed to residential use. Such Supplemental Declaration may contain such additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties.
- Section 5.**     **Additions Limited to Declarant.** No one other than the Declarant, its successors or assigns, shall have the right to subject any property to this Declaration or to cause any property to be entitled to the benefits arising hereunder.

**Section 6. Severability as to each Property.** Notwithstanding any provision contained herein, if any Lot or Lots or Parcel of Land hereafter made subject to this Declaration, shall for any reason fail to be validly bound by the terms of this Declaration, such failure as to such Lot, Lots or Parcel of Land shall in no way prevent or limit the effectiveness of this Declaration with respect to all other properties that are properly included hereunder.

### **ARTICLE III - Membership In Association**

The following sections of this Article III shall apply to membership in the Association as that term is defined in Article I, Section 3, hereof.

**Section 1. Members.** Every person, as defined, who is a record owner of a fee or undivided fee interest of any lot within the property shall be a member of the Association, as defined, provided however, that anyone who holds such interest solely as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment within the property as defined herein. Ownership of such lot shall be the sole qualification for membership. Any member of Stoneclift Property Owner's Association, Inc., must pay an annual assessment on a yearly basis, to be determined by the Board of Directors for the purposes of cash flowing the Association's operational and capital needs.

**Section 2. Classification of members.** Members shall be divided in two classes denominated as Class "A" members and Class "B" members and defined as follows:

**(a) Class "A" Members.** Class "A" members shall be all owners as defined in Section 1, with the exception of the Declarant. Class "A" members shall be entitled to one vote for each lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest in any lot, all such persons shall be members, and the vote for such lot shall be exercised as they, among themselves, determine, but in no event, shall more than one vote be cast with respect to any such lot. Any lot conveyed by Declarant to an owner becomes a Class "A" membership lot at the time of such conveyance.

**(b) Class "B" Members.** Class "B" members shall be the Declarant, who shall be entitled to ten votes for each lot in which it holds the interest required for membership by Section 1. The Class "B" membership shall cease and be converted to Class "A" membership upon the first to occur of the following: (a) when the total votes outstanding in the Class "A" membership are equal to the total votes outstanding in the Class "B" membership; or (b) on January 1, 2017. From and after the happening of these events, whichever occurs first, the Class "B" members(s) shall be deemed to be Class "A" member(s) entitled to one vote for each lot in which it holds the interest required for membership under Section 1, above.

- Section 3. Voting.** At every meeting of the Members, each of the Members shall have the right to cast his vote as provided in Section 2 above, on each question. Whenever a quorum is present, the vote of the members representing a majority of the total votes cast with respect to any questions, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute or this Declaration, a different vote is required, in which case such express provision shall govern and control. The vote for any membership which is owned by more than one person may be exercised by any of them present at any meeting, unless any objection or protest by any other owner of such membership is noted at such meeting. In the event all the co-owners of any membership who are present at any meeting of the members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. No member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is not a member in good standing as defined in Article I, §15.
- Section 4. Proxies.** A member may appoint any other member or the Declarant or any other person permitted by law or by the Bylaws as his proxy. In no case may any member (except the Declarant) cast more than one vote by proxy in addition to his vote. Any proxy must be in writing and must comply with all requirements imposed by law and the Association's Bylaws.
- Section 5. Quorum.** The presence at the meeting of members entitled to cast, or of proxies entitled to cast, 1/10<sup>th</sup> of the votes of each class of membership shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation, the Bylaws or this Declaration. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat, shall have power to adjourn the meeting, from time to time, without notice, other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

#### **ARTICLE IV - Mutual Rights of Member and Association**

- Section 1. Member's Easements of Enjoyment.** Subject to the provisions of Section 3 of this Article IV, every member shall have a right and easement of enjoyment in and to the common areas and such easement shall be appurtenant to and shall pass with the title to every lot.
- Section 2. Common Areas.** In order to preserve and enhance the property values and amenities of Stoneclift, the common areas and all facilities built or installed thereon, shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. In order to provide reasonable pedestrian and vehicular ingress and egress to the property, an easement is hereby declared on the common areas contained in any portion of the property, which

**Section 2.** **Common Areas (cont.).** upon recordation of this Declaration, shall be deemed to run with the land and shall permit vehicular and pedestrian traffic and ingress and egress for each owner and each owner's heirs, successors, assigns, lessees and invitees.

**Section 3.** **Extent of Members' Easements.** The rights and easements created hereby shall be subject to the following: Reasonable Rules and Regulations, including Construction Requirements as set out in Article VII, imposed by the Association in accordance with its Articles and Bylaws. The right of the Association to take such steps as are necessary to protect the common areas against foreclosure.

(a) The right of the Association as provided in its Articles and Bylaws, to suspend the voting rights and right to use of recreational facilities for any member for any period during which any assessment remains unpaid, and for any period, not to exceed sixty (60) days for any infraction of its published Rules and Regulations.

(b) The right of the Declarant and of the Association to grant and reserve easements and rights-of-way through, under, over and across the common areas, for the installation, maintenance and inspection of phones, electricity, sewer, water, master television antenna system cable TV, storm drains, drainage ditches, gas or other utilities.

(c) The right of the Association to limit the number of guests of members.

(d) The right of the Association to dedicate or transfer all or any part of the common area, including, but not limited to, private streets, whether or not such private streets are common area, which streets will be constructed, to County specifications, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective, unless an instrument has been signed by two-thirds (2/3) of each Class of members, agreeing to such dedication, sale or transfer. However, the developer reserves the right, in its sole discretion, to dedicate and transfer all or any part of a street(s) until such time as the first of the following occurs: (a) when the total votes outstanding in the Class "A" membership are equal to the total votes outstanding in the Class "B" membership; or (b) on January 1, 2017.

(e) The right of the Association to regulate parking on all lots and common areas, including roadways.

(f) The right of the Association, in accordance with its Articles and Bylaws to borrow money for the purpose of improving the common areas and facilities, and with the assent of two-thirds (2/3) of each class of members, mortgage, pledge, deed in trust or hypothecate, any or all of its real or personal property as security for money borrowed or debts incurred.

(g) The right of the Association to suspend the voting rights and right to use the common areas of a member, who is not in good standing as defined in Article I, §15.

**Section 4. Delegation of Use.** Any owner may delegate in accordance with the Bylaws, his right of enjoyment to common areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

**Section 5. Use of Motor Vehicles.** The use of all motorized vehicles shall be limited to roadways and driveways, only.

## **ARTICLE V - Assessments and Liens**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Each owner of any lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges;

(b) Special assessments for capital improvements; and

(c) Emergency assessments as provided in the Bylaws, such assessments to be fixed, established and collected, from time to time, as hereinafter provided.

The annual, special and emergency assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such lot at the time when the assessment fee was first due.

**Section 2. Annual Assessments and Carrying Charges of the Association.** Each member of the Association shall pay to the Association a monthly sum equal to one-twelfth (1/12) of the members' proportionate share of the sum required by the Association as determined and established by its Board of Directors, to meet its annual expenses, including, but not limited to the following:

(a) The cost of all operating expenses of the Stoneclift Property Owners Association, Inc., and services furnished, including charges by the Association for facilities and services furnished by it;

(b) The cost of necessary management and administration, including fees paid to a Management Agency;

(c) The amount of all taxes and assessments levied against the association or upon any property, which it may own or which it is otherwise required to pay;

(d) The cost of fire and extending liability insurance on the project and the cost of such other insurance as the Association may effect;

(e) The cost of furnishing water, electricity, garbage and trash collection and/or other utilities, to the extent furnished by the Association;

(f) The cost of funding any reserve established by the Association, including, when appropriate, a general operating reserve and/or a reserve for replacements, and the cost of replacements;

**Section 2. Annual Assessments and Carrying Charges of the Association (cont.).**

(g) The estimated costs of repairs, maintenance and replacement of the common areas and the improvements located thereon,

(h) The estimated costs of repairs, maintenance and replacement of all roads and sidewalks in Stoneclift; and,

(i) Any other expenses and costs reasonably associated with the upkeep and maintenance and to sustain ability of the Association to operate effectively.

(j) The cost of purchasing or replacing the furniture, appliances, tables, chairs, kitchenware, swimming pool equipment, any exercise equipment, and any other personal property used and belonging to the Association and located on the Common Areas.

**Section 3. Determination of Annual Assessment.** The Board of Directors of the Association shall determine the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require as provided in the Bylaws. Written notice of the annual assessment shall be sent to every owner subject thereto. The Board of Directors shall establish the due dates. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessment on a specified lot has been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

**Section 4. Special Assessments.** In addition to the regular assessments authorized by this Article, the Association may levy in any assessment year a special assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement located upon the Common Areas, including the necessary fixtures and personal property related thereto, or for such other purposes as the Board of Directors may consider necessary, provided that any such assessment shall have the assent of the Class "A" members representing two-thirds (2/3) of the total number of votes eligible to be cast. A meeting of the appropriate members shall be duly called for this purpose, written notice of which shall be sent to all members at least ten (10) days, but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting.

**Section 5. Emergency Assessments.** In the event of any emergency situation, condition or occurrence affecting the life, health, safety or welfare of members or property of members, the Board of Directors, acting pursuant to this section, may declare an emergency assessment in such amount and payable at such time as Board of Directors, in its sole discretion, shall deem necessary. All other provisions of this Declaration shall govern such emergency assessment, except for the amount and time of payment. Such assessment shall be borne pro rata by all members of the Association.

**Section 6. Non-Payment of Assessment.** Any assessment levied, pursuant to this Declaration, or any installment thereof, which is not paid on the date when due, shall be delinquent and shall, together with interest thereon, and the cost of collection thereof, hereinafter provided, thereupon become a continuing lien upon the lot or lots belonging to the member against whom such assessment is levied and shall bind such lot or lots in the hands of the then owner, his heirs, devisees, personal representative and assigns. The personal obligation of the member to pay such assessment shall, however, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied, pursuant to the Bylaws, or any installment thereof, may be maintained without foreclosing or waiving the lien herein. Any assessment levied, pursuant to this Declaration or any installment thereof, which is not paid within ninety (90) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the highest lawful rate allowed in the State of Tennessee, and may, by resolution of the Board of Directors, subject the member obligated to pay the same to the payment of such penalty of "late charge", as said association may fix, and the Association may bring an action at law against the member personally obligated to pay the same, or foreclose the lien against the lot or lots then belonging to said member, in either of which events, the members shall be obligated to pay all interest, costs and reasonable attorney's fees. No owner may waive or otherwise escape liability for assessments provided for herein by non-use of the common areas or abandonment of his lot. For the purpose of enforcing the lien of any unpaid and delinquent assessment each lot owner grants to the Board of Directors of the Association, irrevocably the power to sell his unit at public outcry to the highest and best bidder for cash. The Association is authorized to make such a public sale if and only if such sale is made subordinate to any bona fide recorded mortgage or deed of trust upon the lot. The Board of Directors is authorized to elect to enforce any lien by action in court where no priority is sought over the lien of a prior recorded mortgage or deed of trust. Any such sale shall be made after first advertising the sale of said property for thirty (30) days by four (4) weekly publications in some newspaper in the County of Marion, City of Jasper, State of Tennessee, giving notice of the time and place of such sale, the owners of that lot, and all other information as required by T.C.A. § 35-5-104, relating to non-judicial foreclosures of deeds of trust. Any sale of a lot to enforce a lien for delinquent and unpaid assessments shall be free from the equity and statutory right of redemption, marital, homestead and all other exemptions, all of which are expressly waived by the lot owner; and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the lot, except real estate and ad valorem taxes assessed against the lot. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of expenses of protecting the property and the expenses of litigation, attorney's fees and sales commission, and second to the payment of real estate and ad valorem axes assessed against the lot and any prior recorded mortgages, and third to the payment of all amounts due the Association under the terms of the Declaration and Bylaws, and the balance, if any, to the owner whose

**Section 6. Non-Payment of Assessment (cont.).** lot is sold and his assigns. Upon any default in the payment of any assessments, the Board of Directors shall have the right to all rents, issues and profits from the lot in default and shall have the right to secure the payment through notice to those in possession of the lot or by entry into possession in the same manner as the mortgagee entering into possession following default. All rights, remedies and privileges granted to the Board of Directors, or a lot owner, pursuant to any terms, provisions and covenants or conditions of the Declaration and Bylaws shall be deemed to be cumulative, and the exercise of anyone or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges as may be granted to such party by the Declaration and Bylaws or at law or in equity. The Association shall notify the holder of the first mortgage on any lot for which any assessment levied, pursuant to this Declaration becomes delinquent for a period in excess of ninety (90) days and in any other case where the owner of such lot is in default with respect to the performance of any other obligation hereunder for a period in excess of ninety (90) days. Any other member Association which may hereafter be established shall have the same rights to enforce payment of unpaid annual, special or emergency assessments as granted to the Association, set out in this Section.

**Section 7. Acceleration of Installments.** Upon default in the payment of any one or more monthly installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

**Section 8. Priority of Lien.** The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

- (a) General and special assessments for real estate taxes on the lot; and
- (b) The liens of any bona fide deeds of trust, mortgage instruments or encumbrances duly recorded on the lot, prior to the assessment of the lien thereon or duly recorded on said lot after receipt of a written statement from the Board of Directors, reflecting that payments on said lien were current as of the date of recordation of said Deed of Trust, mortgage instruments or encumbrances duly recorded on the lot prior to the assessment of the lien thereon or duly recorded on said lot after receipt of a written statement from the Board of Directors reflecting that payments on said lien were current as of the date of recordation of said Deed of Trust, mortgage instrument or encumbrance.

**Section 9. Subordination and Mortgage Protection.** Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied, pursuant to this Declaration upon any lot in Stoneclift shall be subordinate to, and shall in no way affect the rights of the holder of any indebtedness secured by any recorded bona fide first mortgage (meaning a mortgage with priority over other mortgages),

- Section 9. Subordination and Mortgage Protection (cont.).** upon such interest made in good faith and for value received; provided however, that such subordination shall apply only to assessments which become due and payable, prior to the sale or transfer of such lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure, and shall not in such instance apply to claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all lot owners, including the mortgaged lot. Such sale or transfer shall not relieve the purchaser at such sale of the lot from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment which said lien, if any, claims shall have the same effect and be enforced in the same manner as provided herein. No amendment to this Section shall affect the rights of the holder of any such mortgage for the indebtedness secured thereby recorded, prior to recordation of such amendment, unless the holder thereof for the indebtedness secured thereby shall join in the execution of such amendment.
- Section 10. Rights and Obligations of Forced-Sale or Foreclosure Purchases.** Any person who acquires any ownership in a Lot or Living Unit, except through foreclosure of an institutional first mortgage of record, or by virtue of any institutional first mortgagee accepting a deed to property in lieu of foreclosure, including without limitation, persons acquiring title by operation of law, including purchasers at judicial sales, shall not be entitled to the use or occupancy of the Lot or Living Unit or enjoyment of the Common Elements, until such time as all unpaid annual, special or emergency assessments, due and owing by the former Owner(s) have been paid. The Association, acting through its Board of Directors, shall have the right to assign its claim and lien rights for the recovery of any unpaid assessments to Declarant, or to any other Association, or to any third party.
- Section 11. Additional Default.** Any recorded first mortgage secured on a lot in the Residential Community shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such mortgage or the indebtedness secured thereby by reason of Section 9 of this Article.
- Section 12. Initial and Maximum Annual Assessment.** The initial Homeowners Association fee shall be \$1,000.00 per lot, payable at closing of sale and purchase of the lot.
- (a) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased effective January 1 of each year, without a vote of the membership in conformity with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July or five (5%) percent, whichever is more, or

**Section 12. Initial and Maximum Annual Assessment (cont.).**

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above that established by the Consumer Price Index or five percent (5%) formula by a vote of the members for the next succeeding period of two years, provided that any such change shall have the assent of a majority of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten (10) days, nor more than thirty (30) days in advance of the meeting setting forth the purpose of the meeting.

(c) The foregoing formulas for increases in annual assessments notwithstanding, the members may determine greater or lesser increases if approved by a 2/3's vote of said members.

**Section 13. Exemptions.** The following property shall be exempt from assessments, charges, and liens created by this Article:

(a) Common Areas, including sidewalks, if any, within the Common Areas.

(b) Streets and roadways.

(c) Utility easements and all other easements under this Declaration or under any Plat or other document relating to any part of the Properties.

(d) Utilities.

(e) Water and sewer systems and the real and personal property associated therewith.

(f) Reserved Properties.

(g) Specific Lots expressly exempted by Declarant, during the Development Period for a term no longer than the Development Period.

**Section 14. Roads and Drainage.** All streets and roadways within Stoneclift, until dedicated in accordance with Article IV, Section 3(f), shall remain private. The continued maintenance, upkeep, repaving, and replacement of same shall be the responsibility of the Association. In addition, until dedicated, the Association will be responsible for keeping the roads clean and passable. This same provision applies to drainage ways and other appurtenances, if any.

**Section 15. Access to Properties.** The Board of Directors of the Association will have full power and authority to regulate access into and out of Stoneclift through the gated facilities provided therefor. Board shall adopt such rules, regulations or other protocols, which will limit access only to those living or having business or providing services in Stoneclift. Such rules, while limiting access to only those allowed into the development, will not impair the accessibility of the development to: (i) contractors, their employees, sub-contractors, and material suppliers; (ii) employees and agents of any company installing, maintaining, and servicing utilities; (iii) the Owners, their family, guests and invitees (iv) Approved Real Estate Agency designees and (v) Declarant, its agents and employees. In addition, the rules shall provide for unimpaired access to medical or law enforcement agents, whether routine or emergency, and to other governmental

**Section 15.** **Access to Properties (cont.).** agents or employees as necessary and as requested by the Board. The cost of any devices required to be used in accessing the development shall be passed on to the user, excluding, however, government agencies, their employees and agents. Anyone causing damage to the gated entrance and any improvements related thereto, or any fencing around the front and outside boundaries of the properties shall be responsible for the cost of repairing same.

**Section 16.** **Regulation of Any Commercial Activities in the Common Area.** The Board may approve the installation of appropriate vending machines around the Pavilion and pool area, and such activities shall not be construed as violating the residential only restriction. Any profits from such activities shall belong to the Association.

## **ARTICLE VI - Association Powers and Responsibilities.**

### **IN GENERAL.**

**Section 1.** **Common Area.** The Association, subject to the rights, easements and privileges set forth in this Declaration, shall be responsible for the management and control of the Common Area, and all improvements thereon and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. The Association shall maintain, operate, and preserve the Common Area for the good and benefit of the Properties and holders of easements herein provided for or contemplated.

**Section 2.** **General Powers.** The Association shall have all powers conferred upon non-profit corporations by common law and the statutes of the State of Tennessee in effect from time to time. Such powers shall include, without limitation, all powers necessary or desirable to exercise the rights and privileges of the Association and to perform the duties and responsibilities of the Association as set forth in this Declaration, the Charter, the Bylaws, and as provided by law.

**Section 3.** **Rules and Regulations.**

(a) The Association, through its Board, may establish reasonable Rules and Regulations concerning the use of the Common Area and improvements located thereon. Copies of all such Rules and Regulations and any amendments thereto shall be made available to all Owners upon request. Such Rules and Regulations shall be binding upon the Owners and users, their families, tenants, guests, invitees, licensees, and agents, until and unless such Rules or Regulations requirement is specifically overruled, canceled, or modified by the Board.

(b) Members subject to the Declaration shall be responsible for ensuring that the occupant, and the family, tenants, guests, invitees, licensees, contractors, and agents of the Members or the occupants strictly comply with all provisions of the Declaration, Bylaws, Rules and Regulations and Construction Requirements (set out in Article VII), infra, promulgated by the Board.

**Section 4. Enforcement of Restrictions.** The Association shall have the right and power to enforce each and every covenant, condition, provision and restriction herein contained, including those restrictions relating to architectural approval and construction, and shall have all those powers and privileges necessary or desirable to so act.

**Section 5. Power to Assess.** The Association shall have the right and power, as more particularly set forth in this Declaration, to fix, levy, collect, and enforce payment by any lawful means, all charges and assessments, pursuant to the terms of this Declaration, to pay all expenses in connection therewith, and all office and other expenses incident to the conduct and affairs of the business of the Association.

**Section 6. Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration, the Bylaws, or its Charter and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**Section 7. Board Right to Act.** To the extent not otherwise required by the provisions of the Tennessee Non-Profit Corporation Act, this Declaration, the Bylaws, or the Charter, the powers granted to the Association by this Declaration or the Charter or Bylaws of the Association shall be exercised by the Board of Directors, acting through the officers of the Association or the Association's general manager, if any.

#### **MAINTENANCE.**

**Section 8. Association Responsibility.** The Association shall maintain and keep in good repair the Common Area. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or governmental authority, the obligation to pay each such assessment being a separate and independent covenant on the part of each Owner.

**Section 9. Owners' Responsibility.** The maintenance responsibility of an Owner subject to this Declaration shall be as follows:  
**(a) Maintenance Responsibility.** Except as otherwise specifically provided herein or in any Supplemental Declaration providing for such maintenance by an incorporated association of Owners, all maintenance of Lots shall be the responsibility of the Owner. Without limiting the generality of the foregoing, the maintenance of any Single Family Detached Structure or of any Living Unit within a Single Family Attached Structure shall be the responsibility of the Owner

**Section 9. Owners' Responsibility (cont.).**

**(a) *Maintenance Responsibility (cont.)***. thereof, unless such maintenance responsibility is expressly assigned to an incorporated association of such Owners in a recorded Supplemental Declaration affecting such property. Such maintenance shall include, but not be limited, to reasonable maintenance of all exterior portions of a Lot, inclusive of all landscaping and grass. Once an improvement or other alteration of the natural state is made on or to a Lot, it shall be the responsibility of the Owner thereof to properly maintain such improvement or other alteration.

**(b) *Assessment of Cost***. In the event the Board of Directors determines that (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair, or replacement of items for which he or she is responsible hereunder; or (ii) that the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or his or her family, guests, lessees, or invitees, the Association may provide any such maintenance, repair, or replacement at such person's sole cost and expense, and the cost (which may include a reasonable administrative fee) shall be added to and become a part of the assessment to which such party is subject and shall become a lien against the Lot, Living Unit or other property of such party collectible as an assessment, pursuant to Article V hereof. By way of example and not limitation, in the event of an Owner's failure to comply with the provisions hereof, the Association may provide exterior maintenance as follows: paint, repair, replace and care for roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.

**(c) *Access at Reasonable Hours***. For the sole purpose of performing the exterior maintenance authorized by this Article VI, the Association, and its agents, employees, successors and assigns shall have a perpetual right and easement, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day except Sunday; provided however, that in cases of emergency, the Association may enter upon such Lot or the exterior of any Living Unit at any time, on any day, without notice.

**INSURANCE AND CASUALTY OR LIABILITY LOSSES.**

**Section 10. Insurance.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy applicable to the Common Areas covering the Association, its officers, directors, members, agents and employees in amounts to be determined from time to time by the Board of Directors of the Association and such other insurance coverages as may be required by applicable law or determined by the Board to be in the best interests of the Association. Such coverages may include, without limitation, director's

- Section 10.** **Insurance (cont.).** and officer's insurance providing liability insurance coverage to the Association's directors and officers. The cost of all such insurance coverage shall be a part of the Common Assessment of the Association. Each insurance policy may contain a deductible in such amounts as determined by the Board. It shall be the responsibility of each Owner at his own expense, to provide public liability, property damage, title, and other insurance with respect to his own Lot or Living Unit.
- Section 11.** **Disbursement of Proceeds.** All proceeds of insurance policies shall be disbursed as determined by the Board of Directors, acting in its sole reasonable discretion.
- Section 12.** **Lot Owners' Responsibility.** In the event that any Living Unit or other structure is totally destroyed or rendered uninhabitable or unusable and the Owner or Owners thereof determine not to rebuild or reconstruct, then that Owner or Owners shall clear that Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. The obligation of an Owner hereunder specified shall not be applicable to any Owner whose Lot or Living Unit is insured under a casualty insurance policy obtained by an association of owners on his behalf, but to such association.

## **ARTICLE VII - ARCHITECTURAL CONTROLS**

- Section 1.** **Preamble.** The primary purpose of these covenants and restrictions and the foremost consideration in the origin of same has been the creation of a community which is aesthetically pleasing and functionally convenient. The establishment of objective standards relating to design, size and locations of structures makes it impossible to take fully advantage of the individual characteristics of each parcel of property and of technological advances and environmental values. For this reason, such standards are not fully established by these covenants. In order to implement the purposes of these covenants, Declarant and Association shall establish and amend, from time to time, Construction Requirements and guidelines, which shall be in addition to these covenants, and administered by the ACC.
- Section 2.** **Architectural Control Committee (hereafter ACC).**
- (a) The ACC shall consist of no less than three (3), nor more than five (5) members, which members shall be appointed by the Board of Directors and serve at the pleasure of the Board.
  - (b) The Board shall appoint a chairperson who shall preside at all meetings of the ACC. The ACC shall operate in accordance with policies and procedures established, from time to time by the ACC and approved by the Board.

(c) The ACC is authorized to retain, within budget limits established by the Board, services or consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ACC in performing its functions set forth herein and all such expenses shall be at the expense of the Association.

(d) Any member of the ACC appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee and its successor or successors appointed to fill such vacancies shall serve at the pleasure of the Board.

(e) The ACC is hereby authorized to promulgate, subject to approval by the Board, written architectural standards, regulations, policies, procedures and guidelines (hereafter referred to as the Construction Requirements) governing the construction, location, height, size, dimensions, material and design of improvements (including, without limitation, driveways), structures, landscaping, the contents of submitted plans and specifications, and other information as may be required in order to evidence compliance with and obtain approval, pursuant to this Article VII. The ACC shall make its standards, regulations, policies, procedures and guidelines available to Owners who seek to engage in improvement or construction upon Owners' lot and shall conduct its operations in accordance therewith. Decisions of the ACC shall take into account and be founded upon the nature, kind, shape, color, size, material and location of any construction, improvements, buildings, structures or development and the quality of workmanship planned, and the harmony of external design in relation to surrounding structures, topography and elevation of such construction, improvements, buildings, structures and development. The architectural standards and Construction Requirements shall be binding upon and enforceable against all Owners.

(f) The ACC may charge a reasonable fee as determined by the Board, from time to time, to cover the administrative expense of its review and comments, such fee to be payable by the applicant to assure compliance with this Declaration and the Design Standards to cover any expenses or damages caused by construction or improvement activities required to be approved by it.

### **Section 3. Single Family Lots.**

(a) No construction, improvements, buildings, structures, landscaping, or development of any kind whatsoever, shall be commenced, carried out on, constructed, altered, added to or maintained on any Single Family Lot, unless and until plans and specifications and related data required by the standards have been submitted to and approved in writing by the ACC. Notwithstanding the foregoing, in the event such plans and specifications have not been approved or disapproved by the ACC within twenty (20) days of submission, such approval shall not be required, provided the proposed construction, alteration or improvement is otherwise in compliance with this Declaration.

**Section 3. Single Family Lots (cont.).**

(b) The ACC shall have the sole discretion to determine whether the plans and specifications submitted for approval are acceptable to the ACC in connection with the approval rights. Any disapproval by the ACC may be based upon any ground whatsoever so long as such disapproval is consistent with the objectives and purposes of this Declaration, including, but not limited to, purely aesthetic considerations, provided that such disapproval is not arbitrary or capricious. Any denial of plans and specifications by the ACC may be appealed to the Board, pursuant to such policies and procedures respecting appeals as may be adopted by the Board.

(c) Any and all plans submitted for the construction of a Living Unit on a Lot shall depict thereon the proposed Living Unit in such detail as requested by the ACC. Any and all requests for alterations or additions to a Lot or Living Unit, including alterations or additions to existing structures or improvements or the addition of additional structures, items or improvements shall depict thereon the proposed addition or alteration in its proposed location with all height, material, location and other specifics as may be requested by the ACC.

(d) Following approval of any plans and specifications by the ACC, representatives of the ACC shall have the right, without notice, during reasonable hours to enter upon and inspect any Lot, Living Unit or other improvements or structures with respect to which construction is underway to determine whether or not the plans and specifications thereof have been approved and are complied with. In the event that ACC shall determine that such plans and specifications have not been approved or are not being complied with the ACC, acting in the name and at the expense of the Association, shall be entitled to enjoin further construction and to require the removal or correction of any work, improvement or structure in place which does not comply with the approved plans and specifications.

(e) Any contractor, builder, person or entity constructing a building upon the Properties shall, prior to 'the beginning of the construction of any such building, furnish to the ACC satisfactory proof that such contractor is licensed and has appropriate builders' risk insurance, including workers compensation insurance, if applicable, effective for the construction period.

(f) Single family attached structures shall be completed according to plans and specifications both as to exterior and interior within such time as shall be fixed by the ACC when the plans and specifications for the particular structure are approved by the ACC.

(g) The contractor, builder or Owner shall submit all structures to inspection by the ACC as required to determine compliance with completion dates as herein provided or as may be provided by the ACC. In the event of non-compliance with completion dates as herein provided, the Association shall have the right, but not the obligation, to hire a contractor and/or contractors to perform the work and furnish the materials necessary for compliance and the Association shall bill the Owner for the amount expended, plus twelve percent (12%) for administration. In the event the Owner does not pay the same, the Association shall have the legal

**Section 3. Single Family Lots (cont.).**

(g – cont.) right to file a lien against the property involved and proceed in law or equity to sell the property to obtain said charges or apply the same against any deposit or bond then in place. All money received over and above said charges and court costs and attorney's fees shall be paid over to the Owner.

(h) No residential structure shall be erected, placed, or permitted to remain on any Lot unless it complies with the following general specifications:

(i) The minimum square footage of heated and finished living area (basements excluded), shall be:

- One level 1,600 square feet
- One and one-half (1 ½) story 1800 square feet with minimum first level of 1,200 square feet.
- Two-story - 2,000 square feet with minimum first level of 1,200 square feet.
- The exterior of the house, and including roof, windows and doors, shall be earth tones. Brick, stone, stucco, shingles, cedar siding, log construction and/or hardiplank shall be used; vinyl siding shall not be used.

**Section 4. Approval of Structures, other than Living Unit.** No other detached structure shall be erected, reconstructed, placed or permitted to remain upon any lot, unless such structure is made an integral part of the Living Unit or Lot, nor unless and until the size, location, type, style of architecture, cost, use, the materials of construction thereof, the color scheme therefore the grade elevation thereof, and the plans, specifications and details of said structure have been first approved in writing by the ACC. Such detached structure shall be subject to all of the covenants, rights, terms, reservations, limitations, agreements and restrictions at any point herein made applicable to the Living Unit. However, a detached shed, barn, or similar types of detached structure are permitted upon any Lot, so long as it is 500 square feet or less in size.

**Section 5. Disclaimer of Approval of Plans.** No approval of plans and specifications and no publication of Construction Requirements, pursuant to the terms of this Declaration by the ACC shall be construed as representing or implying that such plans, specifications or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Living Unit, or other improvement built in accordance therewith will be built in a good workmanlike manner. Declarant, the Association and the ACC shall not be responsible or liable for (i) any defects in any plans or specifications submitted, revised, or approved, pursuant to the terms of this Declaration, (ii) any loss or damages to any person rising out of the approval or disapproval of any plans or specifications, (iii) any loss or damage arising from the non-compliance of such plans and specifications as with any governmental ordinances and regulations, nor (iv) any defects in construction undertaken, pursuant to such plans and specifications.

**Section 6. Site Location of Structures.** In cooperation with the ACC and in order to assure that location of buildings and other structures will be located with regard to the topography of each property, aesthetic and environmental considerations, the Association reserves unto itself, its successors and assigns the right to decide the approximate site and location of any building or structure or structures on any property in Stoneclift for reasons which may, in the sole and uncontrolled discretion and judgment of the Association seem sufficient. Such location shall be determined only after reasonable opportunity is afforded the property owner to recommend a specific site.

**Section 7. Construction Criteria and Requirement of Compliance With Law.** All Living Units and other structures and improvements shall be constructed, modified, altered or added to in compliance with any and all then applicable state, county and municipal zoning and building restrictions and any applicable regulations and restrictions as might apply to the real estate. All grading, clearing, construction of impervious surfaces, building and other construction activity performed on Lots or Living Units that are subject to the rules, regulations, guidelines and restriction of any regulatory authority shall be performed in accordance with such rules, regulations, guidelines and restrictions as are then applicable. Notwithstanding anything in this Article or elsewhere to the contrary, this section shall be applicable to all construction, modifications, additions or alterations in or upon all Single Family Lots, and other property located within the Properties.

**Section 8. Unapproved Variances Prohibited.** In all instances where plans and specifications are required to be submitted to and are approved by Declarant or the A.C.C., if subsequent thereto, there shall be any variance in the actual construction and location of any alteration or addition, fence, wall, hedge or roadway, any such variance shall be deemed a violation of these restrictions, unless re-submitted and approved.

**Section 9. Mailboxes and Street Address Signs.** Each Lot Owner shall be required upon construction of a dwelling to purchase and install the following:  
(a) Mailbox; and,  
(b) Street address sign.  
To assure harmony in the selection and placement of such items, Declarant and Association will select and provide at cost, plus shipping, and an appropriate administration fee, if any, the mailbox and street sign to be installed. In addition, Declarant and Association shall determine the location of such items on the Owner's Lot or right-of-way in front of same.

## **ARTICLE VIII - Approved Contractors.**

### **Section 1. Preamble.**

(a) In order to enhance the development and to add and maintain property values within the development, Declarant and Association have undertaken to seek out home building contractors doing business in the Greater Chattanooga, Tennessee, community who have heretofore demonstrated their ability to carry out quality construction in a financially and professionally responsible way. In addition, Declarant has sought to find home building contractors who are willing to invest their own money, time and reputation in seeing that the development succeeds from the standpoint of facilitating a harmony of quality constructed homes in such a way as to add and maintain value within the development.

(b) Based upon Declarant's and Association's desire to establish and maintain harmony of development, quality of construction, and the maintenance of value in Stoneclift, Declarant and Association established criteria to select and approve licensed residential contractors permitted to build in the Development. From that process, contractors, completely independent of Declarant, Association, and each other, have been approved, the names of which will be provided to each Owner.

### **Section 2. Approved Contractors.**

Because Stoneclift is (i) different from other residential developments in the surrounding community, (ii) its success or failure is a financial risk to any contractor committing its financial, professional, and personal resources to an untested market, and (iii) the contractor is willing to assume that risk to carry out the overall purpose of the development, Declarant and Association will not be approving any other contractors to build residential dwellings in Stoneclift, unless it is to replace a prior approved contractor who becomes unable to continue of its own volition or because of specified defaults. And, to this end, Declarant and Association reserve the right to add or remove approved contractors at Declarant's sole discretion. Based upon the foregoing provisions in this Article VIII, at such time as an Owner undertakes to construct a Single Family Detached Structure in Stoneclift, he will use one of the approved contractors.

### **Section 3. Declarant as a Contractor.** Declarant may, but shall not be required to act, as a contractor in Stoneclift to construct Detached Single Family Structures.

### **Section 4. Essential Requirements for Contractor's Continued Approval.**

- (a) Properly licensed by the State of Tennessee as a residential contractor;
- (b) Estimated cost of any house shall be less than the maximum amount for which Contractor is licensed to build.
- (c) Properly insured and/or bonded as a building contractor, including, but not limited to liability and workers' compensation;
- (d) Remain financially stable and capable of properly completing any home construction undertaken; and
- (e) Comply with all instruction and requirements of the ACC and the Home Construction Requirements for Stoneclift.

**Section 5. Non-assignability of Contracts by Contractor.** Approved contractors shall not assign any construction contracts to any contractor not approved as herein set out. This shall not be construed as affecting the right of approved contractors to sub-contract with others.

**Section 6. Disclaimer of Approval of Contractors.** The approval of building contractors to construct Living Units in Stoneclift, shall not be construed as representing or implying that the Association or Declarant are representing, guaranteeing or assuring in any way the satisfactory completion of any construction contract entered into by an Owner with an approved contractor. The Association and Declarant shall not be liable or responsible in any way for any breach of contract problems experienced by Owner and/or Owners' contractor. Owners are required to go through their own approval process among the approved contractors in choosing their specific contractor.

## **ARTICLE IX - Utility Easements**

With respect to all existing utilities and utilities installation in Stoneclift, Declarant hereby reserves and is given a perpetual, alienable, and releasable easement, privilege and right on, over and under the grounds where such utilities are presently located. Such easement shall permit Declarant to erect, maintain and use electric and telephone wires, cables, conduits, natural gas lines, water mains, sewer lines, drainage lines and drainage ditches, or drainage structures, sewers, whether gravity, low pressure or otherwise, and other suitable equipment and structures for drainage and sewerage, cable TV, and other conveniences or utilities on, in, over, and under all the areas presently served, and on, in, over, and under all the areas presently served, and on, in, over, and under all of the easements, including, but not limited to, roadways shown on any plat or plan of Stoneclift, whether such easements are shown on said plans or plats to be for drainage, utilities or other purposes). Declarant also reserves and is given the same perpetual, alienable, and Releasable easement with respect to all future utilities established in Stoneclift. Declarant shall have the unrestricted and sole right and power of alienating and releasing the privileges, easements and rights reserved and referred to in this Section or any such privileges, easements and rights reserved on any plat or plan of Stoneclift. The owners, other than the Declarant, of the Lot or Living Units, subject to the privileges, rights, and easements referred to herein shall acquire no right, title or interest in or to any wires, cables, conduits, pipes, mains, lines or other equipment or facilities placed on, over, or under the property which is subject to said privileges, rights, and easements. All such easements, including those designated on any plan or plat of the Properties, are and shall remain private easements and the sole and exclusive property of the Declarant. Utilities, unless conveyed by written instrument to the Association, or to any other Member Association, hereafter established, are specifically reserved unto the Declarant.

## **ARTICLE X - Construction And Maintenance of Common Properties**

- Section 1. Roads and Utilities.** It is contemplated the roads and utilities shall be constructed by Declarant and that when completed will become part of the Common Property. However, Declarant shall be the sole judge as to when such roads and utilities shall be constructed and extended from time to time.
- Section 2. Recreational Facilities.** It is contemplated Developer shall construct a pavilion house, swimming pool and other recreation facilities that will be conveyed to the Association for the benefit of all Owners and Members. The cost of maintenance, operation, taxes, and other expenses incident to such Common Properties shall be the obligation of the Association and shall be paid from assessments, and also from fees for the use of the Common Properties, if any. Declarant shall be the sole judge as to the time when the Recreational Facilities shall be constructed.

## **ARTICLE XI - Use Restrictions**

The real property described in Article II, hereof, is and shall be held, transferred, sold, conveyed, given, donated, leased, possessed, and used subject to this Declaration and the following use restrictions:

- Section 1. Residential Use Only.** All Lots and Living Units, shall be used and occupied solely and exclusively for the private residence purposes by a single Family, as defined in Article I, Section 11. No portion of the property can be re-zoned without Declarant's prior consent.
- Section 2. Set Back Lines.** No Living Unit shall be erected, reconstructed, placed or permitted to remain, upon any Lots nearer the front or street line or lines than the building setback lines, or lines shown upon the Plat of Stoneclift, nor nearer to any side line or rear line than shall be determined by the ACC, in writing, at the time of the approval of the plans and specifications for said Living Unit. This restriction as to the distance at which said Living Unit shall be placed from the front, side and rear lines of said premises shall apply to and include porches, verandas, roof overhangs, and other similar projections of said dwelling. The parcel of land upon which a dwelling is to be constructed and/or maintained together with the land adjacent thereto and used in conjunction therewith may include one lot or part of one, two or more lots delineated on the recorded Plat of the sub division, but only with the written consent of the ACC and any required governmental approval. The ACC may require dwellings to be erected farther from the street than the building set-back line or lines.
- Section 3. Set Back Line Variances.** In connection with the provisions set out in the preceding paragraph, it is hereby provided that if, in the opinion of the ACC, by reason of the shape, dimensions, or topography of the premises herein described,

- Section 3.** **Set Back Line Variances (cont.).** or by reason of the type of dwelling to be erected thereon, or for any other reason, satisfactory to it that the enforcement of the provisions of said paragraph would work a hardship, the ACC may modify such provisions so as to permit variations in cost, size, type, location or otherwise that will not, in its judgment, do material damage to any abutting or adjacent property.
- Section 4.** **Driveways.** The location of any and all driveways shall be determined by the ACC in writing at the time of the approval of the plans and specifications for said Living Unit. No driveway shall be located, relocated, or permitted to remain upon said premises, except as determined in writing by the ACC. Complete specifications for construction of driveways including width, culvert size and end walls shall be submitted to the ACC and its approval thereof endorsed thereon in writing. The driveway to each residence shall be hard surfaced with approved concrete, asphalt, pea gravel, brick or stone, or an appropriate combination thereof. No “shotgun” driveways will be permitted. Driveways must curve away from street to home site to ensure maximum privacy.
- Section 5.** **Lawn Areas.** No portion of a Lot nearer to the street than the building set-back line or lines shown upon the Plat of said subdivision shall be used for any purpose other than that of a lawn; nothing herein contained however, shall be construed as preventing the use of such portion of said premises for sidewalks, approved driveways, approved outdoor lighting, the planting of trees, or shrubbery, the growing of flowers or ornamental plants, or statuary fountains, and similar ornamentations, for the purpose of beautifying said premises. However, no vegetables, so called, nor grains of the ordinary garden or field variety shall be grown upon such portion thereof and no weeds, underbrush or other unsightly objects shall be permitted to grow or remain anywhere upon a Lot, and no unsightly objects shall be allowed to be placed or permitted to remain anywhere thereon. Within the time allowed by the ACC after a residence has been completed on any lot in the Stoneclift, the front yard of the lot shall be sodded from the front of the Living Unit to the pavement line of the street in the case of interior lots. In the case of corner lots, the front yard shall be sodded from the front of the Living Unit to the pavement line and the side yard facing the street shall be sodded from the Living Unit to the pavement line. No fence, hedge, wall or enclosure of any kind, for any purpose shall be erected, placed or permitted to remain upon said premises unless the written consent of the ACC has been first obtained therefor, subject to the terms and conditions of ACC consent and approval as to its type height, width, color, upkeep and general conditions pertaining thereto.
- Section 6.** **Completion of Living Unit.** Following the commencement of any structure on the lot, whether it be a primary residence or otherwise, the exterior and interior of said structure shall be completely finished within twelve (12) months unless a written extension has been obtained from the ACC. Construction shall commence no later than twenty-four (24) months from acquisition by Purchaser. In the event

- Section 6.**     **Completion of Living Unit (cont.).** that Purchaser fails or refuses to commence construction within that time period, Declarant shall have the right, but not the obligation, to buy back the property in the amount of the original purchase price.
- Section 7.**     **Reservation of Easements.** Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under each lot to erect, maintain and use wires, cables, conduits, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas and sewer (if any), water other public conveniences or utilities on, in or over those portions of each Lot as may be reasonably required for utility purposes, provided, however, that no such utility easement shall be applicable to any portion of such lot, parcel or tract as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved, pursuant to these covenants by the ACC or (b) such portion of each Lot as may be designated as the site for a building on a plot plan for erection of a building which has been filed with the ACC and which has been approved in writing by the ACC. These easements and rights expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any licensee of Declarant, but this reservation shall not be considered an obligation of Declarant to provide or maintain any such utility or service. Declarant also reserves the right to locate and install drains where it deems necessary and to cause or permit drainage of surface waters over and/or through any Lots.
- Section 8.**     **Underground Utilities.** All water, natural gas and sewer (if any), electrical, telephone, cable service or other utility connections to the home shall be underground.
- Section 9.**     **Public Utility Grants.** Declarant reserves the exclusive right to grant consent for the construction, operation and maintenance of electric, telephone, and cable television lines and conduits, and for water, gas and sewer (if any) and pipes and conduits or any other public utility facilities, together with the necessary or proper incidents and appurtenances, in, through, under and/or upon any and all roads and easements reserved thereto, which are hereafter established.
- Section 10.**    **Drainage.** Natural drainage of streets or roadway ditches will not be impaired by any Owner. Driveway culverts will be of sufficient size to afford proper drainage of ditches without backing up water into a ditch or diverting flow.
- Section 11.**    **Sight Distance at Intersections.** All property located at any street intersection shall be so landscaped as to permit safe sight across the street corners. No fence, hedge or shrub planting shall be placed or permitted to remain at any corner where this would create a traffic or sight problem.

- Section 12. Nuisances.** No obnoxious, unlawful, or offensive activity shall be carried upon any Lot in Stoneclift. It shall be the responsibility of each Owner to prevent the development of any unkempt, unclean, or unsightly conditions of building or grounds on any Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific are of the Lot.
- Section 13. Pets.** No animals, livestock or poultry of any kind shall be kept on any Lot within Stoneclift, except for household or companion pets, such as a dog or cat, except as set forth in Section 14. As to such pets, they shall be kept in such a way not to endanger the health, safety or welfare of or unreasonably disturb the Owner of any Lot or Living Unit within the Properties. All pets must be secured by leash or lead, at any time they are permitted outside the Living Unit or other enclosed area on the Lot for such purpose which has been approved for the maintenance and confinement of pets. Pets must be kept in such a way as not to violate any law or local ordinance or constitute a nuisance. Dogs or cats running free, which are not under the control of their owner or master will be reported as a stray and subject to the same lawful disposition as are applicable to stray animals. Dogs or cats running at large shall be deemed to be a nuisance carried on by its owner or master and subject such person(s) to lawful restraint and damages. No owner may maintain more than two (2) dogs or cats without the prior written consent of the Association.
- Section 14. Horses.** Horses shall not be permitted at Stoneclift.
- Section 15. Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage or other outbuilding shall be used on any lot at any time as a residence. The Association or the ACC may adopt such reasonable Rules and Regulations pertaining to the placement of any boat, trailer, house trailer, tractor, motor home, commercial vehicle or equipment stored or proposed to be stored or placed upon any Lot or Living Unit subject to this Declaration.
- Section 16. Parking.** The Board of Directors of the Association or the ACC, acting as its designee, shall have the authority to promulgate Rules and Regulations to govern or prohibit the outside storage or parking of vehicles upon any Lot or within any portion of the Common Area. No Owner or other occupant of any portion of the Properties shall repair or restore any vehicle of any kind upon or within any Lot or within any portion of the common Area, except one (1) within an enclosed garage or two (2) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. Golf carts and other utility vehicles shall be kept in the Owner's garage.
- Section 17. Screened Areas.** Each Lot owner shall provide a screened area, not generally visible from the road to serve as a service yard and an area of the storage of garbage receptacles, wood piles, and fuel tanks or similar storage receptacles. Plans for such screen delineating the size, design, texture, appearance and location

- Section 17. Screened Areas (cont.).** must be approved by the ACC, prior to construction. Garbage receptacles and fuel tanks may be located outside of such screened area, only if located underground and approved by the ACC. All heating and air conditioning units, gas meters (if any), solar devices or other utility related equipment shall be hidden from view of the street by screening and/or with landscaping.
- Section 18. Access Across Lots.** No Lot shall be used to provide ingress or egress to or from another Lot or other property within or outside the development, unless Lots adjoin, without the express written consent of the Declarant.
- Section 19. Prohibited Uses or Practices.** No industry business or trade, occupation or profession of any kind, shall be conducted, maintained or permitted upon any Lot. No well for gas, oil or other substance, shall at any time, whether intended for temporary or permanent purpose, be erected, placed or permitted to remain upon any Lot, nor shall any Lot be used in any way or for any purpose which may endanger the health or unreasonably disturb the quiet of the owner or owners of any adjoining land. No advertising sign, billboard or other advertising devise shall be erected, placed or permitted to remain upon said premises, nor be visible from the outside of said dwelling without the consent of Association first having been obtained. A real estate sign not exceeding two (2) square feet in area on a side and advertising the Lot or dwelling "For Sale" or "For Rent" may, however, be permitted. The right is reserved by Declarant to erect small structures and place signs on any unsold lot or improvements thereon.
- Section 20. Pools.** Above ground pools are not permitted. Prior written consent must be approved by the ACC for in-ground pools.

## **ARTICLE XII - Declarant's Rights.**

- Section 1. Amendment of Declaration.** For and during the Development Period defined in Article I, Section 10, Declarant reserves the sole and absolute right to amend, change or modify any part of this Declaration so long as it does not affect the voting right to amend, change or modify any part of this Declaration, and does not affect the voting right granted to Class "A" Members of the Association.
- Section 2. Declarant's Use of Lots and Common Properties and Limited Common Properties for Development and Sales Purposes.** Declarant reserves the following rights and uses as to all Lots owned by the Declarant, the Common Properties and Limited Common Properties.
- (a) The right to complete improvements indicated on the Plat.
  - (b) The right to make parts of the Property, subject to a condominium or other related to multi-family Living Units.
  - (c) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant or the contractor of any Living Units to

**Section 2. Declarant's Use of Lots and Common Properties and Limited Common Properties for Development and Sales Purposes (cont.).**

(c- cont.) maintain during the period of construction and sale of said Living Units, upon such portion of the premises as Declarant deems necessary, such facilities, as in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of said Living Units, upon such portion of the premises as Declarant deems necessary, such facilities, as in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of said Living Units, including, but without limitation, a business office, storage area, construction yard signs, model units and sales office.

(d) The right to perform repairs and construction work, and to store materials in secure areas, in Lots and in Common Areas, and the further right to control all such work and repairs, and the right to access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Board. The Declarant has such an easement through the Common Areas as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Declarant Rights. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State, riparian owners or upland owners to fulfill the plan of development for the Property.

(e) The right to post signs and displays in the Common Areas to promote sales of Lots and Living Units and to conduct general sales activities in a manner as will not reasonably disturb the rights of Owners.

(f) The right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has been represented as property of the Association. Declarant reserves the right to remove from the Property, any and all goods and improvements used in the Property, marketing and construction, whether or not they have become fixtures.

**Section 3. Declarant's Control of the Association.** During the Development Period as that term is defined in Articles I and X, Declarant shall control the Association. Declarant or persons designated by Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before the end of the Development Period, but in that event the Declarant may require, for the duration of such period of Declarant control, that specified actions of the Association, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. Upon the termination of any period of Declarant control, the Lot Owners shall elect a Board in accordance with the provisions of Article III.

**Section 4. Waiver and Liability as to Declarant.** In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Declarant contemplated under this Declaration or the exercise of any rights of Declaration or the exercise of any rights of Declarant provided in this Declaration, Declarant shall not be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against the Association, an Owner or such other person arising out of or in any way

- Section 4.** **Waiver and Liability as to Declarant (cont.).** related to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld, and any exercise of any right of Declarant provided herein.
- Section 5.** **Acquisition of Additional Common Area.** Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described herein which, upon conveyance or dedication to the Association, shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.
- Section 6.** **No Requirement to Add Additional Properties.** No provision of this Declaration shall be construed to require the Declarant to add any real property to the scheme of this Declaration.
- Section 7.** **Declarant's Right to Abate or Remove Violations.** Declarant reserves and is hereby granted the right in case of any violation or breach of any or the restriction, rights, reservations, limitations, agreements, covenants and conditions herein contained, to enter the property, upon or as to which such violation or breach exists and to summarily abate and remove, at the expense of the owner thereof, any erection, thing, or condition, that may be or exists thereon contrary to the intent and meaning of the provisions hereof as interpreted by Declarant and Declarant shall not, by reason thereof, be deemed guilty of any manner of trespass for such entry, abatement or removal. A failure of Declarant to enforce any of the restrictions, rights, reservations, limitations, agreements, covenants and conditions contained herein shall in no event be construed taken or held to be a waiver therefor or acquiescence in or consent to a continuing, further or succeeding breach or violation thereof, and Declarant shall at any and all times have the right to enforce the same.
- Section 8.** **Interference with Declarant Rights.** Neither the Association, the Board or any Lot Owner may take any action or adopt any Rule, which will interfere with or diminish any of Declarant's rights or reservations provided in this Declaration which are specifically and expressly subject to the rights of Declarant, and in the event there is any conflict with any part of this Article with any other provisions of this Declaration, the provisions of this Article shall prevail. This Declaration shall be liberally construed to protect the rights of Declarant set out herein.

### **ARTICLE XIII - Exterior Maintenance.**

- Section 1.** **Exterior Maintenance.** In the event the Owner of any Lot or Living Unit shall fail to properly provide for exterior maintenance as to buildings or grounds, the Declarant or the Association may, but shall not be obligated to, provide exterior maintenance as follows: paint, repair, replace and care for roofs, gutters, down

- Section 1.**     **Exterior Maintenance (cont.).** spouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.
- Section 2.**     **Assessment of Cost.** The cost of such exterior maintenance shall be assessed against the Lot or Living Unit upon which such maintenance is done and shall be added to and become a part of the annual assessment or charge to which such Lot or Living Unit is subject under Article V, Section 2, hereto and, as part of such assessment or charge, it shall be a lien subordinate, however, to lien by reason of a first mortgagee or first deed of trust, and shall become due and payable in all respects as provided in Article V, Section 6, hereof. Upon collection by the Association, the cost shall be reimbursed to Declarant.
- Section 3.**     **Access at Reasonable Hours.** For the purpose solely of performing the exterior maintenance authorized by this Article XIII, the Declarant or the Association, through its respective duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, or after reasonable attempts to notify the Owner, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day. In such case, Declarant or the Association shall not be subject to prosecution for unlawful entry or trespass.

#### **ARTICLE XIV - General Provisions**

- Section 1.**     **Amendment or Modification of Declaration.** Subject to Declarant's right to amend this Declaration as set out in Article XIII, above, and following the expiration of the Development Period, the provisions of this Declaration may be amended if such amendment is adopted by a two-thirds (2/3) vote of the Class "A" memberships of the Association, after thirty (30) day written notice has been sent to all such members. Any such amendment must be in writing and properly executed and recorded. The rights of Declarant set out in Article XIII cannot be amended without the consent of Declarant. In addition, the Declaration may be amended unilaterally at any time and from time to time by the Declarant and the Board of Directors of the Association without the consent of the Members (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii), if such amendment is necessary to enable any reputable title insurance company to issue a title insurance policy with respect to the Lots or Living Units subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including for example, the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots or Living Units subject to this Declaration, or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots or Living Units subject to this Declaration and

**Section 1.**     **Amendment or Modification of Declaration (cont.).** (v) correcting any scrivener's errors otherwise found to exist within this Declaration provided such amendment shall not adversely affect Declarant's rights or the title to any Owner's Lot or Living Unit or materially alter or change, any Owner's right to the use and enjoyment of the Common Areas as set forth herein, unless Declarant and such Owner shall consent thereto in writing. Any such amendment shall be effected by written instrument executed by the Association and the Declarant and filed in the Office of the Register of Deeds for Marion County, Tennessee.

**Section 2.**     **Duration and Coverage.** Subject to the provisions of Section 1 above, and Article XIII, Section 1, all provisions, covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant or the Association;, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date of this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless during the last year of any ten (10) year period, an instrument signed by two-thirds (2/3) of the Class "A" memberships of the Association has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective, unless written notice of the proposed agreement is sent to every Owner at least sixty (60) days in advance of any action taken.

**Section 3.**     **Enforcement.**

(a) Each Owner and each occupant of a Lot or Living Unit thereon and their respective families, tenants, guests, invitees and licensees shall comply strictly with this Declaration, the Bylaws, the Construction Requirements and Rules and Regulations of the Association as any of the Association as any of the Same may be amended, from time to time. Owners shall be responsible for the conduct of their families, tenants, guests, invitees and licensees, and in the event of a violation or breach, or threatened violation or breach, of any of the same, the Association or any Owners or Declarant, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. The Association or Declarant shall have the right to immediately tow, without any additional notice or period in which to correct such violation, any improperly parked or prohibited vehicle as identified herein or within the Bylaws or Rules and Regulations promulgated by the Association, neither the Declarant, nor its agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal.

(b) All reasonable costs incurred by the Association to enforce this Declaration, the Bylaws, Construction Requirements or Rules and Regulations of the Association, including, without limitation, reasonable costs and attorney's fees, shall be paid by the violating Owner and shall be collectable by suit, judgment, lien and foreclosure as provided in Article V hereof. Inasmuch as the enforcement of the provisions of this Declaration, the Construction Requirements,

**Section 3. Enforcement (cont.).**

**(b – cont.)** the Bylaws and Rules and Regulations is essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that the Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or threatened violation or breach. Further, in the event of any failure to comply strictly with this Declaration, the Bylaws, the Construction Requirements or the Rules and Regulations of the Association, then, in addition to the foregoing remedies, the Board of Directors of the Association may levy reasonable monetary fines against the Owner for such failure, the amount of such fines to be determined from time to time by the Board; provided that each day or time a violation is continued or repeated after written notice is given to the owner to cease and desist, it shall be considered a separate and additional violation. All monetary fines shall be collectable by suit, judgment, lien and foreclosure, as provided in Article V hereof.

**(c)** No delay, failure or omission on the part of the Association or any aggrieved Owner in exercising any right, power or remedy thereafter shall, as to the same violation or breach, occurring prior to subsequent thereto, bar or effect its exercise or enforcement. No right of action shall accrue, nor shall any action be brought or maintained by anyone whomsoever against the Association or Declarant for on or account of any failure to bring any action on account of any violation or breach, of the provisions of this Declaration, the Bylaws, the Construction Requirements or such Rules and Regulations, however long continued, or for adopting provisions which may be deemed unenforceable.

**Section 4. Indemnification.** The Association shall to the full extent permitted by Tennessee Code Annotated §48-58-501 et seq., as such may be amended, from time to time, indemnify such persons as it elects to indemnify pursuant hereto. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 5. Merger and Subdivision of Lots.** Upon application in writing by an Owner of adjoining Lots, the Board of Directors may, acting in its sole discretion alter the lot boundaries. Such merger, subdivision, or other alteration shall be in conformance with this Declaration and any Supplemental Declaration that may be applicable to such Lots(s), including provisions which may further regulate merger and provisions regulating use of Lots. Such plats and plans as may be necessary to show the altered Lot lines shall be thereafter prepared at the expense of requesting Owner or Owners, who shall additionally be responsible for all costs, including legal fees, associated with the merger, subdivisions, or other alteration. The Board of Directors may impose conditions for use of the affected Lot(s) as a condition precedent to granting approval for such a merger,

- Section 5.**     **Merger and Subdivision of Lots (cont.).** subdivision, or other alteration. From and after the time a merger or subdivision of Lots or other alteration of Lot lines is approved, such resulting Lots shall, for all purposes, including, without limitation, the levying of assessments, be considered Lots in accordance with their new boundaries. The merger or re-subdivision of Lots may increase the number of Lots subject to Article V Assessments, but in no event shall Assessment requirements be diminished in any way. Notwithstanding the foregoing, Declarant shall not be required to obtain the approval of the Association in respect to the merger, subdivision or alteration of boundaries of Lots owned by Declarant. In addition to the approval of the Association, the Owner(s) must obtain the approval of and the consent of any Mortgagee (s) having a collateral or security interest in the Lot(s) being merged, subdivided or altered.
- Section 6.**     **Perpetuities.** 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 such period of time which the law of Tennessee would permit in order for such provision(s) not to be declared void or voidable because of a violation of the Rule against Perpetuities and its successor statutory and common law principles and the application of same to such provision(s).
- Section 7.**     **Conveyances Subject to Easements.** It is expressly agreed and understood that the title conveyed by the Declarant, the Association or any Owner to any Lot, Common Area or other parcel of land within the Properties by contract, deed or other conveyance shall be subject to any recorded easements and to any easements referred to in this Declaration affecting the same for roadways or drainage, access, ingress, egress, water, gas, sewer, storm sewer, electric light, electric power, telephone, or cable television purposes shall convey no interest in any pipes, lines, poles, or conduits, or in any utility facility or appurtenances thereto, constructed by or under authority of the Declarant, or the Association or any easement owner or their agents, through, along or upon the premises affected thereby to serve said land or any other portion of the Properties, and where not affected, the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved.
- Section 8.**     **Incorporation by Reference.** To the extent not inconsistent with the terms hereof, this Declaration and all dedications, limitations, restrictions, and reservations shown on any recorded Subdivision Plat of the properties as recorded by the Declarant or the Association are incorporated herein and made a part hereof as if fully set forth herein and shall be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of the Declarant or the Association, and, thereafter, each successive Owner, conveying any of the Properties, whether specifically referred to therein or not.

- Section 9. No Implied Covenants or Easements or Negative Reciprocal Easements or Covenants.** With respect to any property owned by Declarant that is not made subject to this Declaration, no negative reciprocal covenants or implied or equitable covenants or easements shall be created by virtue of any written material which is not of record in the Register's Office of Marion County, Tennessee. Brochures, advertisements, unrecorded plats, course of trade, existing development, etc. shall not be construed as legal documents, writings, or implications that purport to create any legal right. Developer has reserved all rights to develop its remaining property, without restrictions from existing and future property owners in Stoneclift, so long as it is consistent with the character and nature of a gated residential subdivision.
- Section 10. Conflicts with any Prior Recorded Documents.** Should any provision of this Declaration conflict with any documents or instruments recorded in the Register's Office of Marion County, Tennessee, which are applicable to any property in Stoneclift, then the provision(s) of the prior recorded document shall prevail.
- Section 11. No exemption from Contribution.** No Owner of any Lot or Property Interest in the Stoneclift may exempt himself from liability for his contribution toward the membership assessments by waiver of the use and enjoyment of any of the Common Properties or the recreational facilities, or by the abandonment of his Lot or Property Interest.
- Section 12. Interpretation.** The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. Declarant during the Development Period and thereafter, the Board of Directors of the Association, shall have the right to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and such determination, construction or interpretation by Declarant or Board shall be final and binding upon all properties.
- Section 13. Severability.** Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no ways affect the other provisions hereof, which are hereby declared to be severable and which shall remain in full force and effect.
- Section 14. Authorized Action.** All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board in a manner provided for in the Bylaws of the Association, unless the terms of this instrument provide otherwise.

- Section 15. Notice.** Any notice required to be sent to any Member under the provisions of the Declaration shall be deemed to have been properly sent, and notice hereby given, when mailed, with the proper first class postage affixed, to the address appearing on the Association's Membership list. Notice to one or two or more co-owners of a Lot or Living Unit, shall constitute notice to all co-owners. It shall be the obligation of every member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor in title.
- Section 16. Captions.** The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.
- Section 17. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the use of any gender pronoun shall include the masculine, the feminine, and the neuter wherever the context requires.
- Section 18. Limitation of Challenges.** An action to challenge the interpretation of this Declaration as set out in Section 12 above, or the validity of any amendment adopted by the Association or Declarant or both may not be brought more than one (1) year after the interpretation has been made in writing or after the amendment is adopted.
- Section 19. View Impairment.** Neither the Declarant nor the Association guarantees or represents that any view, the common Area, any recreational facilities, or any vistas from Parcels will be preserved without impairment. The Association, and during the Development Period, the Declarant shall have: (i) no obligation to take any actions including but not limited to pruning or thinning trees or other landscaping to provide visibility of any vista; and (ii) the right to add or remove trees and other landscaping adjacent to any portion of the properties in accordance with the Design Guidelines.
- Section 20. 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 Section shall not prohibit the board from acquiring and disposing of tangible personal property or from acquiring and disposing of other real property, which may or may not be subject to this Declaration.
- Section 21. Condemnation.** The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. Whenever any part of the Common Area

**Section 21. Condemnation (cont.).** shall be taken by or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Area under threat of condemnation only if approved by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association. If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking Members holding at least sixty-seven (67%) of the total Class "A" vote of the Association and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and ACC. If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

**Section 22. Presence and Management of Wildlife.** Each Owner and Occupant, and each tenant, guest and invitee of any Owner or Occupant acknowledges that the Properties are located adjacent to and in the vicinity of wetlands and other natural areas. Such areas may contain wildlife. Neither the Association, the Board, the original Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Properties. Each Owner and Occupant of a Parcel and each tenant, guest, and invitee of any Owner or Occupant shall assume all risk of personal injury, illness or other loss or damage arising from the presence of such wildlife and further acknowledges that the Association, the Board, the original Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or Occupant, or any tenant, guest or invitee of any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife. The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to engage in wildlife management plans and practices on the Properties to the extent that such practices are permitted by applicable state and federal law. The Declarant may assign these management rights to the Association.

**Section 23. Security.** Each Owner and Occupant, and their respective lessees, licensees, guests and invitees, shall be responsible for their own personal safety and security on their Parcel and on the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the properties, nor shall any

**Section 23. Security (cont.).** of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken, if any. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measure, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system or measure is designed or intended. Each Owner acknowledges, understands and covenants to inform all Occupants of its property that the Association, its Board of Directors and Committees, the Declarant, and any successor Declarant are not insurers or guarantors of security within the Properties and that each Person using the Properties assumes all rights of personal injury and loss or damage to property, including the contents thereof, resulting from acts of third parties. Any costs incurred by the Association to provide such services shall be paid by the Association.

**Section 24. Owners' Insurance.** By virtue of taking title to a Parcel, 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 Parcel, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage or destruction of structures on or comprising his or her Parcel, 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 in accordance with Article 9. Alternatively, the Owner shall clear the Parcel of all debris and ruins and maintain the Parcel 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.

**Section 25. Limitation of Liability.** Notwithstanding the duty of the Association to maintain and repair portions of the Common Area, neither the Association, its Board of Directors, its successors or assigns, nor any officer or director or committee member, employee, agent, contractor (including management company, if any) of any of them shall be liable to a Member or a member of a Member's immediate household for any injuries or damage sustained in the Area of Common Responsibility, the Common Area or other area maintained by the Association, or for any injury or damage caused by the negligence or misconduct of any Members or their family members, guests invitees, agents, servants, contractors or lessees, whether such loss occurs in the Common Area or in individual Parcels. Each Owner, by virtue of acceptance of title to his or her Parcel, and each other Person having an interest in or right to use any portion of the Properties, by virtue of accepting such interest or right to use, shall be bound by this Section and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed under this Section.

- Section 26. Tree Removal.** 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 appropriate reviewing body; 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 prior written consent of the appropriate reviewing body. The appropriate reviewing body may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed.
- Section 27. Lighting.** Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Parcel; (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; (6) front house illumination of model homes; or (7) any additional lighting as may be approved by the appropriate reviewing body. All exterior lighting will utilize full cut-off optics.
- Section 28. Trails.** The Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas within the Properties, including the Common Area, to be used as recreational pedestrian pathways and trails (“trail system”). Each Owner acknowledges, understands and covenants to inform the Occupants of such Owner’s parcel, that the Properties may contain a trail system and that there may be certain inconveniences and loss of privacy associated with the ownership or use of lots adjacent to such trail system resulting from the use of the trail system by the Declarant, the Association, its Members, their tenants, occupants, guests and invitees.
- Section 29. Rezoning.** No Owner or any other Person may apply or join in an application to amend, vary or modify any applicable zoning law or code pertaining to the properties without the prior written consent of Declarant. Each person that acquires any interest in the Properties acknowledges that Stoneclift is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or challenge: (a) changes in uses or density, or (b) changes in the Master Plan relating to property outside the area in which such person owns a lot. Declarant may apply for such rezoning as to any portion of the Properties owned by it at any time.
- Section 30. Priority of Documents.** In the event of any inconsistency, the Declaration shall have the priority over the Association’s Charter and the Charter shall have priority over the Bylaws and the Bylaws shall have priority over the Rules and Regulations.

- Section 31. Warranties and Representations.** Declarant specifically disclaims any intent to have made any warranty or representation in connection with Stoneclift, except as specifically set forth therein, and no person shall rely upon any warranty or representation not so specifically made. Membership assessments are estimates only, and no warranty, guaranty or representation thereof is made or intended, nor may one be relied upon.
- Section 32. Acceptance by the Association and Owners.** The Association by and through its duly authorized Board and Officers approve the foregoing and all of the covenants, terms and conditions, duties and obligations of this Declaration, and as may be amended from time to time. Owners, by virtue of this acceptance of any transfer to them of a Lot, Living Unit or other property interest in Stoneclift, and other parties by virtue of their occupancy of property, hereby approve the foregoing and all of the terms and conditions, duties and obligations of this Declaration and agree to be legally bound thereby.
- Section 33. Acceptance and Enforcement of this Declaration.** Each grantee of Declarant, by the acceptance of a Deed of Conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, easements, and the jurisdiction, rights and powers of Declarant, created or reserved by this Declaration of Restrictions, or by Plat or Deed restrictions heretofore recorded, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed, shall run with the land and bind every owner of any interest therein, and inure to the benefit of such power, in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every Deed of Conveyance.

**IN WITNESS WHEREOF**, the parties hereto for themselves and their respective successors and assigns have executed this instrument by their respective duly authorized office on this day and date above written.

**STONECLIFT, LLC**

By: Jay M. Jenkins (Signed)  
Developer