Box 2D

This instrument prepared by:
Tune, Entrekin & White
21st Floor, First American Center
Nashville, Tennessee 37238

DECLARATION OF PROTECTIVE COVENANTS,

CONDITIONS AND RESTRICTIONS FOR

WHITWORTH

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS dated as of the 7TH day of DECEMBER, 1989, and executed by RCC Associates, L.P., a Delaware limited partnership (hereinafter sometimes referred to as "Developer");

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real estate in the County of Davidson, State of Tennessee, described on Exhibit "A" attached hereto and incorporated herein by reference (said real estate being referred to herein the "Properties") which Developer desires to develop as a residential community to be known as "Whitworth" with various open spaces and common facilities for the benefit of said community; and

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

WHEREAS, the Developer desires to establish and provide for a system of administration and continual operation and maintenance of certain Common Areas and the Properties, as hereinafter described; and

WHEREAS, Developer further desires to establish for Developer's benefit and for the mutual benefit and advantage of all future owners and/or occupants of the Properties and all persons or entities having any interest in the Properties, certain rights, easements, privileges, obligations, restrictions, covenants, liens, assessments and regulations governing the use and occupancy of the Properties and the maintenance, protection and administration of the Common Areas thereof, all of which are intended to be in furtherance of a plan to promote and protect the operative aspects of residency or occupancy in the Properties and on all portions thereof, and are intended to be construed as covenants running with the land which shall be binding on all parties hereafter having or acquiring any right, title or interest in all or any portion of the Properties and which shall inure to the benefit of each Owner thereof;

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

ARTICLE I

Definitions

The following words when used in this Declaration or any supplemental declaration hereto shall, unless otherwise prohibited by the context, have the following meanings:

1.1. **"Association"** shall mean and refer to the Whitworth Homeowners' Association, Inc., a nonprofit corporation to be organized and existing under the laws of the State of Tennessee, its successors and assigns.

1.2. **"Building"** shall mean and refer to any residential building which may be built on the Properties including, without limitation, detached houses, townhouses, cluster houses or condominiums.

1.3. **"Building Plans"** shall mean and refer collectively to the survey, site plan, landscape plan, Building and architectural plans, and material samples board described in Section 6.1.

1.4. **"Bylaws"** shall mean and refer to the Bylaws of the Association attached hereto as Exhibit "B" and made a part hereof, and as may be amended from time to time.

1.5. **"Common Areas"** shall mean and refer to all real property, and the improvements and facilities located thereon, situated within the Properties now or hereafter owned and maintained by the Association for the common use and enjoyment of the Owners, including, but not limited to, areas designated as "open space", "common area" or "open area" on any Plan, all portions of the streets, parking areas, all open space and landscaped areas, retention and drainage areas, nature trails, sidewalks, patios, and walls constructed by the Developer.

The term "Common Areas" as defined herein shall not be deemed to include any "Common Elements" which are a part of any horizontal property regime established on any part of the Properties pursuant to Article XIII hereof, nor shall the term "Common Areas" include any Residential Unit or any publicly dedicated streets or roads.

1.6. **"Condominium Site"** shall mean and refer to any portion of the Properties intended for any type of independent ownership for use and occupancy by single family residences by the creation and establishment thereon of a horizontal property regime under the Tennessee Horizontal Property Act and so designated by Developer, whether a Building is constructed thereon or not.

1.7. **"Condominium Unit"** shall mean and refer to that portion of the Properties intended for any type of independent ownership for use and occupancy as a residence by a single family created and established by the submission of a Condominium Site to the

Horizontal Property Act of the State of Tennessee for the purpose of creating a horizontal property regime thereon.

1.8. **"Declaration"** shall mean and refer to this Declaration of Protective Covenants, Conditions and Restrictions applicable to the Properties and which is recorded in the Office of the Register of Deeds for Davidson County, Tennessee, as may be from time to time amended.

1.9. **"Developer"** shall mean and refer to RCC Associates, L.P., a Delaware limited partnership, having a principal place of business in Nashville, Tennessee, its successors and assigns, provided such successors and assigns are designated in writing by Developer as a successor or assign of the rights of Developer herein.

1.10. **"Lot"** shall mean and refer to any plot of land shown on any recorded Plan intended for any type of independent ownership for use and occupancy as a residence by a single family, whether a Building is constructed thereon or not, and which may contain, without limitation, detached houses, townhouses or cluster houses.

1.11. **"Member"** shall mean and refer to any person or persons who shall be an Owner, and as such, shall be a Member of the Association.

1.12. **"Mortgagee"** shall mean and refer to the holder of a first lien deed of trust encumbering a Residential Unit.

1.13. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, including Developer, of the fee interest in any Residential Unit which is part of the Properties, excluding, however, those parties having such interest merely as a security interest for the performance of an obligation, including a Mortgagee, unless and until such person or entity has acquired the fee interest pursuant to foreclosure or any proceeding in lieu of foreclosure.

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

1.15. **"Plan"** shall mean and refer any recorded plat or plan of the Properties, or any portion thereof, which has been filed in the Register's office for Davidson County, Tennessee, and such other plats or plans as are submitted to this Declaration pursuant to Article XIII hereof.

1.16. **"Properties"** shall mean and refer to any and all of that certain real estate described in Exhibit "A" attached hereto, and such other property as may be submitted to this Declaration pursuant to the provisions of Article XIII hereof.

1.17. **"Residential Unit"** shall mean and refer to any portion of the Properties intended for any type of independent ownership for use and occupancy as a single family

residence and shall include, as the context may require, (i) a Lot, (ii) a Condominium Unit, and (iii) prior to its submission to the Tennessee Horizontal Property Act and the creation and establishment of a horizontal property regime thereon, a Condominium Site.

1.18. **"SARB"** shall mean and refer to the Site and Architectural Review Board.

ARTICLE II

Properties Subject to This Declaration, Reservation of Easements

2.1. **Submission of the Properties to Declaration and Bylaws.** The Developer, as legal title holder in fee of the Properties, hereby submits and subjects the Properties to the provisions of this Declaration. This Declaration shall constitute covenants running with the land and binding upon all parties now owning or hereafter having or acquiring any right, title or interest in the Properties or any part thereof, and shall inure to the benefit of each such parties. Every person hereafter acquiring a Residential Unit, or any portion of the Properties, by acceptance of a deed to any interest in a Residential Unit, or any portion of the Properties, shall accept such interest subject to the terms of this Declaration, and by acceptance of the same shall be deemed to have consented to and agreed to be bound by the terms, conditions and covenants of this Declaration.

2.2 **Reservation of Easements.** Developer reserves the rights of ingress and egress across the Properties for the purpose of construction and completion of streets, utilities and Common Areas and generally for the purpose of completing the intended development of the Properties.

ARTICLE III

Membership in Association

3.1. **Members.** Every person or entity who is an Owner shall be a Member of the Association for such period of time as such person or entity is an Owner. Membership shall be appurtenant to and may not be separated from ownership of any Residential Unit.

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

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

3.2.2. **Class B.** The Class B Membership shall be the Developer, its successors or assigns. The Class B Membership shall terminate and cease upon the first to occur of the specific written termination by Developer or September 1, 2003.

3.3. **Class A Voting.** Except for matters concerning special assessments and amendments to this Declaration, Class A Members shall not be entitled to vote until the termination of the Class B Membership, at which time Class A Members shall be entitled to one vote for each Residential Unit owned. The vote for any one Residential Unit owned by more than one person or entity shall be exercised as they among themselves shall determine, but in no event shall the vote or votes with respect to any jointly owned Residential Unit be cast separately.

3.4. **Class B Voting.** Except for special assessments and amendments to this Declaration, the Class B Member (Developer) shall be the only Member entitled to vote in the Association until such time as the Class B Membership shall terminate and cease.

3.5. **Special Assessments and Amendments.** On all matters concerning a special assessment relating to the Common Areas or an amendment to this Declaration, the voting shall, prior to termination of the Class B Membership, be as follows:

3.5.1. **Class A.** The Class A Members shall have one (1) vote for each Residential Unit owned.

3.5.2. **Class B.** The Class B Member shall have four (4) votes for each Residential Unit owned.

3.6. **Suspension of Voting Rights.** Any Member who is delinquent in the payment of any charges duly levied by the Association against a Residential Unit owned by such Member shall not be entitled to vote until all such charges, together with such reasonable penalties as the Board of Directors of the Association may impose, have been paid.

3.7. **Voting by Proxy.** Members shall vote in person or by proxy executed in writing by the Member. No proxy shall be valid after eleven (11) months from the date of its execution or upon conveyance by the Member of his Residential Unit. No proxy shall be valid unless promulgated by the Board of Directors as an official proxy. A corporate Member's vote shall be cast by the President of the Member corporation or by any other officer or proxy appointed by the President or designated by the Board of Directors of such corporation.

ARTICLE IV

Assessments

4.1. **Creation of Lien and Personal Obligation of Assessments.** Each Owner shall, by acceptance of a deed to said Owner's Residential Unit, whether or not it shall be so expressed in any deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of these restrictions and promises to pay to the Association both annual assessments and charges (which may be required to be paid monthly) and special assessments, such assessments to be established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs

of collection therefor as are hereinafter provided, shall be a charge and continuing lien upon the Residential Unit against which such assessment is made as of the effective date of each assessment. Each such assessment, together with such interest thereon and costs of collection therefor as are hereinafter provided, shall also be the personal obligation of the person or entity who was Owner of such Residential Unit at the time when the assessment fell due. In the case of co-ownership of a Residential Unit, all of such co-Owners shall be jointly and severally liable for the entire amount of the assessment. For the calendar year 1989, there shall be no assessments levied by the Association. For the calendar year 1990, the maximum monthly assessment shall be One Hundred Fifty and No/100 Dollars ($150.00). At the election of Developer, there may be established a working capital fund to be funded by Owners. Each Residential Unit's share of the working capital fund shall be collected and transferred to the Association at the time of closing of the sale of each Residential Unit by the Developer and maintained in an account for the use and benefit of the Association. Amounts paid into the fund shall not be considered as advance payment of regular assessments. The purpose of the fund is to insure that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors.

4.2. **Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used exclusively for (a) the improvement, management, maintenance, operation and security of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, the payment of utilities bills thereon (including water for sprinkler systems), and the repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, (b) the cost for the cutting of the front lawns of the Residential Units, provided, however that this shall not be construed to establish the Association as a principal or employer of any person engaged as an independent contractor to perform such services and the Association shall not be liable in connection with any damages caused by any person so engaged to perform such services, and (c) any other reasonable and necessary expenses of the Association. The annual assessments may not be used for paying for the cost of completing the Common Areas being initially installed by the Developer as shown on the Plan. The Bylaws provide that the annual assessment may be paid monthly, at the option of the Board.

4.3. **Special Assessments.** In addition to the annual assessments hereinabove authorized, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas, including the necessary fixtures and personal property related thereto; provided, however, that any such special assessment shall have the assent of, prior to the termination of Class B Membership, fifty-one percent (51%), and thereafter two-thirds (2/3), of the votes of Members present and voting in person or by proxy at an annual or special meeting of the Association at which a quorum is present. Special assessments shall be due and payable on the date(s) which are fixed by the resolution authorizing such assessment. Special assessments may not be used for additions to the Common Areas until termination of the Class B Membership.

4.4. **Commencement.** The assessment for a Residential Unit shall commence upon purchase of the Residential Unit from Developer, or Developer may hereafter set a

date for assessments to commence for all Residential Units which have been purchased from Developer. Assessments on Residential Units that first become subject to assessments after the beginning of a fiscal year of the Association shall be prorated and paid for the remainder of such fiscal year.

4.5. **Due Date of Annual Assessments.** Unless otherwise provided herein, annual assessments shall be due and payable in full within thirty (30) days after billed to an Owner by the Association. The Bylaws contain provisions for payment of the annual assessments in monthly installments, at the option of the Board.

4.6. **Records of Assessment.** The Association shall cause to be maintained in the office of the Association a record of all Residential Units and assessments applicable thereto which shall be open to inspection by any Owner. Written notice of each assessment shall be mailed to every Owner of the Residential Unit subject to assessment.

The Association shall, upon demand and payment of a reasonable charge, furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether the assessments against the Owner's Residential Unit have been paid, and if not, the amount due and owing. Absent manifest error, such certificates shall be conclusive as evidence for third parties as to the status of assessments against such Residential Unit.

4.7. **Effect of Non-Payment of Assessment or Other Charges.** If any annual or monthly assessment or if any special assessment is not paid on the date when due, or if any sum or charge agreed to be paid by Owners in this Declaration is not paid when due, then such assessment, sum or charge shall be delinquent and shall accrue interest thereon at the highest rate permissible under the laws of the State of Tennessee, after the date due. If such assessment, sum or charge is not paid within thirty (30) days after the due date, then the Association may bring an action at law against the Owner personally and/or foreclose the lien against the Residential Unit by court action or trustee's sale, as hereinafter provided, and there shall be added to the amount of such assessment, sum or charge all reasonable attorneys' fees and costs incurred by the Association in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessments as indicated above.

4.8. **Enforcement of Lien by Trustee's Sale.** For and in consideration of the privileges and protections granted herein, and the mutual enjoyment and use of the Common Areas, and for the express purpose of securing the payment of the assessments, other sums and charges described in Sections 4.1 and 4.7, above, and rendering unnecessary court proceedings for the enforcement of the lien described in Sections 4.1 and 4.7, above, each Owner accepting a deed to a Residential Unit, for their heirs, administrators, successors and assigns, does hereby transfer and convey unto Ervin M. Entrekin, Trustee, his successors and assigns (the "Trustee"), each such Residential Unit deeded to such Owner, with the appurtenances, estate, title and interest thereto belonging unto the Trustee for the following uses in trust:

Said Owners agree to pay all assessments, sums and charges when due and upon demand of said Trustee or the Association, to pay, discharge or remove any and all liens

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

If said assessments, sums or charges, or interest thereon, are not paid promptly when due or within any period of cure allowed above, or if after said Owners fail to pay any other sums due as above provided, or further, fail to reimburse the Trustee or Association within thirty (30) days from the date of Trustee's or Association's payment of such sums, this trust conveyance shall remain in full force and effect, and the said Trustee or his successor in trust is hereby authorized and empowered, upon giving twenty (20) days' notice by three (3) publications in any newspaper, daily or weekly, published in Davidson County, Tennessee, to sell said Residential Unit at the front door of the courthouse in said county to the highest bidder for cash at public outcry, free from the statutory right of redemption, homestead, dower and all other exemptions of every kind which are hereby expressly waived; and the said Trustee or his successor in trust is authorized and empowered to execute and deliver a deed to the purchaser at such foreclosure sale. The Association may bid at any sale under this trust conveyance. The Trustee may at any time after default in the payment of any of the above described indebtedness enter and take possession of said Residential Unit and shall only account for the net rents actually received by him. It is further agreed that in the event the Trustee fails, before selling said Residential Unit, as herein provided, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to him by the Trustee of a deed for said Residential Unit. In case of sale hereunder, the proceeds shall be applied by the Trustee as follows:

(i) To the payment of all costs, charges and expenses of executing this conveyance and enforcing said lien as herein provided; also reasonable attorneys' fees for advice in the premises, or for instituting or defending any litigation which may arise on the account of the execution of this conveyance, or the enforcement of said lien; also the expenses of any such litigation.

(ii) To the payment of all taxes which may be unpaid on said premises.

(iii) To the payment of all unpaid indebtedness herein secured.

(iv) The residue, if any, to be paid to said Owners, their order, or to their representatives or assigns.

In the event of the death, absence, inability or refusal to act of said Trustee at any time when action of the foregoing powers and trusts may be authorized, or for any other

reason, the lawful owner and holder of said lien is hereby authorized and empowered to name and appoint a successor in trust to execute this trust by an instrument in writing to be recorded in the Register's Office for Davidson County, Tennessee, and title therein conveyed to the above named Trustee shall be vested in said successor. Trustee is authorized to appoint an attorney-in-fact to conduct in his stead and on his behalf and with the same power possessed by said Trustee as granted herein, any and all foreclosure sales authorized above.

The lien described in this Section 4.8 and in Section 4.1 and 4.7, above, shall be subordinate to the lien of a recorded first mortage or deed of trust encumbering any such Residential Unit; provided, however, in the event the holder or owner of such mortage or first deed of trust becomes the owner of such Residential Unit after foreclosure thereof, such purchaser shall become subject to the lien reserved herein for the purpose of securing all assessments becoming due from and after the date such purchaser accepts a deed to said Residential Unit or enters into possession of said Residential Unit, whichever shall first occur.

4.9. **Assessments During Construction Period.** The amount of the annual assessments set forth in Section 4.1, above, are the maximum amounts for the years set forth therein. Prior to such time as a Residential Unit is completed so as to be ready for use and occupancy as a residence, a scaled down assessment of not less than twenty-five percent (25%) of the maximum annual assessment may, at the discretion of Developer, be charged with respect to any such Residential Unit; provided, that the financial stability of the Association will not be jeopardized. In order to encourage building construction, the Association may also charge an annual assessment greater on undeveloped Lots, sold by the Developer, than on Lots with homes already constructed.

ARTICLE V

Developer's Assessment

5.1. **Exemption.** Developer, and all or any portion of the Properties owned by Developer, shall be exempt from all assessments and the liens therefor of every type provided for by this Declaration; provided, however, upon the expiration of ten (10) years from the termination of the Class B membership, Developer shall, except as hereinafter provided, thereafter pay annual assessments on each Residential Unit owned by Developer not to exceed One Hundred Twenty and No/100 Dollars ($120.00) per year. Upon the expiration of ten (10) years from the termination of the Class B membership, the Developer may designate in writing to the Association certain portions of the Properties which Developer has determined not to use as a building site for Residential Units. Such portion of the Properties so designated by the Developer shall not thereafter be subject to assessment by the Association unless and until they are sold by the Developer. Developer may elect at any time to transfer any of such portion of the Properties to the Association to be used as Common Areas. In the event Developer has not sold all of such portion of the Properties not later than thirty (30) years from the date of the recording of this Declaration, Developer shall at that time transfer any of such portion of the Properties then owned by the Developer to the Association to be used as Common Areas.

ARTICLE VI

Architectural and Building Restrictions

6.1. **Approval of Development.**

6.1.1. Before commencing the construction, reconstruction, remodeling, or alteration of, or addition to, any Building, structure, fence, wall, driveway, path or other improvement of any nature on a Residential Unit, or any portion of the Properties, the Owner shall first submit the Building Plans therefor, together with a submittal fee in the amount of One Hundred Fifty and No/100 Dollars ($150.00), to the SARB for its written approval in accordance with the terms of this Declaration. The Building Plans shall include and be defined as the following:

6.1.1.1. A surveyed plan by a licensed surveyor, at a scale of one (1) inch equals twenty (20) feet, indicating all proposed changes to the existing site, including grading and "limits of construction" lines, must be provided. The site plan must show the exact location of the Building and all improvements on the Residential Unit, including driveways and parking areas, with dimensions from the property line to the proposed Building. The alignment of the driveway and location of utility lines and equipment must be shown and dimensioned. Any outbuilding (garages, sheds, etc.) must be included on the Building Plans. All trees proposed to be removed must be designated on the site plan. The site plan must also show the location of improvements on adjacent Residential Units.

6.1.1.2. A landscape plan at one (1) inch equals twenty (20) feet scale is required showing the location, quantities and types of species being planted on the Residential Unit. A planting schedule shall be included listing the number of each species, their size and condition (balled/burlapped, container, etc.). Also, a set of landscape planting details must be included with the landscape plan.

6.1.1.3. A set of Building architectural plans at one-four (1/4) inch equals one (1) foot scale showing entrances, window locations and elevations of all sides must be submitted.

6.1.1.4. An exterior construction materials sample board showing actual samples of major materials, finishes and colors must be provided.

6.1.2. The Developer will initially furnish Site and Architectural Guidelines (the "Guidelines") for development in construction which will contain statements of policy, philosophy, guides to and certain requirements for construction and development by Owners and their contractors. The SARB may amend the Guidelines from time to time; however, the initial Guidelines established by the Developer shall be binding upon the SARB until the Developer formally amends the Guidelines and makes available amended versions for Owner's use. All Owners and their contractors are responsible for contacting the SARB to obtain and verify the current Guidelines in use. The Guidelines are not intended to be and are not to be interpreted as amendments to the Declaration but as a supplement thereto. In

the event of a conflict between the Guidelines and the Declaration, the Declaration shall control.

6.1.3. Until termination of the Class B Membership, the SARB and/or the Developer may be contacted by written notice to CRC Equities, Inc., 401 Elmington Avenue, Nashville, Tennessee 37205, Attention: Whitworth Development, or such other address as may be designated by the Developer. By supplement to this Declaration filed in the Register's Office for Davidson County, Tennessee, the Developer or the SARB may change the foregoing address.

6.1.4. Developer reserves the right, in Developer's sole discretion, to increase the submittal fee provided for in Section 6.1.1., above, from time to time. Furthermore, Developer shall have the right, but not the obligation, in Developer's sole discretion, to charge and collect from any contractor prior to such contractor being allowed to commence any work on any Residential Unit, or any portion of the Properties, a construction deposit in the amount of Two Thousand Five Hundred Dollars ($2,500.00) to be used as security for the satisfactory cleanup by such contractor during construction and upon completion of the work to be done by such contractor.

6.2. **Submittal of Building Plans.** The following procedure with regard to submittal of Building Plans shall be followed:

6.2.1. The Owner or authorized representative (architect or contractor) must submit two (2) sets of the required Building Plans to the SARB fifteen (15) days prior to scheduled SARB meetings.

6.2.2. The SARB shall meet every thirty (30) days to review submittals. The SARB may decide, in its sole discretion, if any additional meetings are necessary. The SARB may determine, in its sole discretion, the location of its meetings, and shall not be required to give notice of such meetings to anyone. The SARB may conduct its meetings without all members being present and may decide from time to time how many members shall constitute a quorum.

6.2.3. The SARB will inform the responsible party of approval or rejection by a written letter dated no more than forty-five (45) days after the submittal of Building Plans. If approved, a set of submittal documents shall be stamped "approved" and mailed to the Owner or the authorized representative. If a submittal is rejected, the SARB will notify the responsible party by letter. The SARB shall indicate where the applicant's Building Plans fail to comply with either the Declaration or the current Site and Architectural Guidelines in use by the SARB.

6.2.4. The Owner may submit at any time a revised submittal package of Building Plans that takes into account the SARB concerns. The SARB may review submissions prior to the next scheduled meeting and make approvals or rejections. The SARB will inform the applicant by written letter of all approvals or rejections within ten (10) days of the resubmittal. The Owner shall not be required to pay the submittal fee of One Hundred Fifty and No/100 Dollars ($150.00) with the revised submittal package of

Building Plans. In the event the Owner submits a new package of Building Plans, the submittal fee of One Hundred Fifty and No/100 Dollars ($150.00) will be required.

6.3. **Inspection.** Actual construction (including site preparation) by the Owner or his contractor may not commence until the SARB approves the Building Plans. During construction, the Owner or his contractor shall notify the SARB upon fifty percent (50%) completion of the Building or improvements, and thereafter, the SARB shall have five (5) business days to inspect and determine that the subject improvements are being completed in accordance with the approved Building Plans. Upon the completion of the improvements, and prior to occupancy, the Owner or his contractor shall notify the SARB, who shall have ten (10) days thereafter in which to have the improvements inspected by the SARB to insure that the construction was completed in accordance with the Building Plans approved by the SARB prior to construction. In the event that the SARB shall fail to approve or disapprove in writing the partially completed improvements within five (5) business days or completed improvements within ten (10) days after receipt of notice from the Owner or his contractor, such approval shall not be required. In the event an Owner has made changes from the Building Plans approved by the SARB and such changes were not previously approved by the SARB, continued construction shall be halted until the necessary corrections have been made (in the event the improvements are only partially complete) or occupancy of the subject improvements shall be delayed until the necessary corrections have been made (in the event the improvements are completed).

6.4. **Maintenance and Minor Violations.** In the event any Owner shall fail to complete improvements according to the approved plans or to maintain the improvements situated upon said Owner's Residential Unit in a manner satisfactory to the SARB, after ten (10) days written notice to the Owner the Association may, upon the vote of two-thirds (2/3) of the Association's Directors, enter upon said Residential Unit and complete, repair, maintain or restore the exterior of the improvements erected thereon. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Residential Unit is subject and the Owner shall be personally liable for the cost of such maintenance so incurred. In addition to the approval of Building Plans and other matters herein set forth, the SARB shall have the right to waive minor violations and allow minor variances where the same resulted unintentionally or without gross carelessness on the part of any Owner and are not materially harmful to the Properties. If such waiver is granted in writing, then thereafter such matters so waived shall no longer be deemed a violation of these restrictions.

6.5. **Meaning of SARB Approval.** The approval of the SARB of the Building Plans and completed improvements as required above is not intended to be an approval of the structural stability, integrity or design of a completed improvement or of the safety of any component therein, but is required solely for the purpose of insuring compliance with the covenants contained in this Declaration, and further, to insure the harmonious and orderly architectural development and improvement of the Properties. Notice is hereby given to any future occupant of any such completed improvement and all invitees, business guests and other persons who may from time to time enter or go on or about such completed improvements that no permission or approval granted by the SARB with respect to construction pursuant to this Declaration shall constitute or be construed as an approval by

them of the structural stability, design of any building, structure or other improvement and no liability shall accrue to the Developer, the SARB, the Association or any Owner (other than the Owner of the subject improvements) in the event that any such construction shall subsequently prove to be defective.

6.6. **SARB.** The SARB shall consist of three (3) to seven (7) members appointed by Developer, who is empowered to appoint their successors should a vacancy occur, or may remove members and replace them at the Developer's sole discretion until termination of the Class B Membership, and their names shall be maintained at Developer's offices. By supplement to this Declaration the Developer may delegate to the Association the authority and duty to appoint the SARB, and upon termination of the Class B Membership, the authority to appoint the SARB shall automatically be vested in the Association. Building Plans for any Building or improvements of any kind whatsoever on any Residential Unit must conform to all requirements of this Declaration and the then current Site and Architectural Guidelines. The SARB shall be the sole judge or arbitrator of such conformance or non-conformance. Further, the SARB may approve or disapprove Building Plans when the SARB, in its sole discretion and judgment, determines that the proposed improvements or any feature of the Building Plans are not architecturally or aesthetically compatible with the Whitworth development. The SARB may establish its own internal procedures for review and approval of Building Plans and may change such procedures from time to time in its sole discretion. Until termination of the Class B Membership, the Developer may, in its sole discretion, overrule any decision of the SARB.

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

6.8. **Exclusive Contractors.** In order to minimize confusion and complications which may result from the construction of a number of Residential Units upon the Properties at the same time, and in order to insure the maintenance of high quality of construction, the Developer reserves the right to approve contractors authorized and permitted to construct Buildings or other improvements upon or within the Properties. Such approval shall not be arbitrarily or unreasonably withheld.

6.9. **Actions Required During Construction.** All contractors and subcontractors must review and satisfy all guidelines for conservation during construction of Buildings or other improvements as established by the SARB. All proposed construction must be accurately staked out on the site, including all Building corners, outbuildings, major decks, terraces and driveways. A set of SARB approved Building Plans must be on site at all times. The Owner is responsible for obtaining all required local building permits. All alterations to the approved Building Plans must be submitted to the SARB for approval before construction of those alterations can begin except for alterations which involve only the interior portion of a Building. **The construction site must be kept clean and orderly.** Only the construction sign, in the sign format approved by the SARB, will be permitted on a Residential Unit during construction. Contractors must obtain sign approval from the SARB.

6.10. **Construction Requirements for Contractors.**

6.10.1. No sites are to be cleared of trees or scrub by burning methods.

6.10.2. No lumber, brick, stone, block, concrete or other building materials, nor any other thing used for building purposes, shall be stored on any Residential Unit, or the Common Areas, except for the purpose of construction on such Residential Unit or the Common Areas, and then only with the prior written approval of the SARB and for such length of time as is reasonably necessary for the construction of the improvements then in progress. No burning of construction materials or fires shall be permitted on any Residential Unit or Common Areas. No trailers, mobile homes nor temporary structures shall be permitted on any Residential Unit or Common Areas during construction or otherwise unless prior written approval of the SARB is obtained; provided, however, each contractor shall be required to provide one portable restroom facility for any Residential Unit or contiguous Residential Units on which a residence is being constructed but only for the period of construction. The Developer may erect one or more temporary structures on any Residential Unit or the Common Areas for the purpose of maintaining a sales and construction office. **During the construction period, there shall be no encroachment onto any adjacent Residential Unit by any of the work being done on any Residential Unit. During the construction period, the contractor shall, as much as is reasonably practical, keep and maintain the construction site free and clear of debris and rubbish.**

6.11. **Architectural Elements.** The SARB shall be the sole judge of the architectural desirability or compatibility of any Building or improvements to be erected upon a Residential Unit. The SARB shall determine, in its sole discretion, whether or not the architectural style of a Building or other proposed improvement to be erected upon a Residential Unit is compatible with other existing Buildings or improvements and is suitable for the particular Residential Unit upon which it is to be built.

6.12. **Obligation to to Clean Site Upon Destruction.** In the event of the total destruction of any residence constituting a part of a Residential Unit, the Owner shall promptly clear the Residential Unit of debris and leave the same in a neat and orderly condition until such time as reconstruction of the residence shall be commenced. In the event the Owner shall not clear the Residential Unit of debris and leave the same in a neat and orderly condition, and reconstruction shall not have commenced within forty-five (45) days after the destruction occurs, the Association shall have the right, but not the obligation, to promptly clear the Residential Unit of debris and leave the same in a neat and orderly condition, the cost and expense for which shall be borne by the Owner and shall be a lien upon said Residential Unit. The provisions of this Section 6.12. shall not apply in the event that any additional covenants, conditions and restrictions imposed upon any portion of the properties pursuant to Article XIII hereof provide that any additional associations shall have the responsibility to obtain and provide insurance for any Residential Unit and shall be responsible to repair and restore damaged portions of any Residential Unit.

6.13. **Maintenance of Undeveloped Site.** If an Owner has not commenced construction of the Building and other improvements to be located on his Residential Unit within one hundred eighty (180) days after closing of the purchase of his Residential Unit

from Developer, the Owner shall cause his Residential Unit to be improved so the same may be maintained as a completed lawn in condition satisfactory to the SARB and shall so maintain his Residential Unit until construction commences. In the event an Owner fails to so improve his Residential Unit within said period or to maintain the same, and such failure is not cured within thirty (30) days after written notice from the SARB, then the Association may cause said Residential Unit to be so improved or maintained and the Owner shall pay the cost thereof to the Association upon demand. In the event the Owner fails to pay the same upon demand, such sum shall be and become a lien upon his Residential Unit which may be collected from said Owner as an assessment or charge pursuant to Article IV hereof.

6.14 **Assessment for Delay in Construction.** In order to protect and preserve the values, amenities, desirability and attractiveness of the Properties, time is of the essence once construction of the Building and other improvements to be located on a Residential Unit has commenced. Once construction on a Residential Unit commences it shall be the responsibility of the Owner to insure that construction is carried out expeditiously with adequate forces and in accordance with the Building Plans. In the event there is a cessation of construction for a period of more than ninety (90) days, and the Owner (i) fails to cause construction to recommence within thirty (30) days after written notice to the Owner from the SARB and thereafter be diligently carried out to completion or (ii) fails to show, in the sole discretion of the SARB, that such cessation has been caused by unavoidable casualties or other causes beyond the control of either the Owner or his contractor and cannot be so recommenced and carried out within said period but will be so recommenced and carried out within a reasonable time, then the Association may assess the Owner a charge in the amount of one hundred dollars ($100.00) per day for each business day thereafter until construction so recommences and is carried out, said sum to be payable on demand. In the event the Owner fails to pay such assessment upon demand, the same shall be and become a lien upon his Residential Unit which may be collected from said Owner as an assessment or charge pursuant to Article IV hereof.

ARTICLE VII

Improvements, Setback and Use Restrictions

7.1. **Setback Requirements for Residential Units.** Minimum setback requirements have been established but are not intended to gender uniformity. They are intended to avoid overcrowding and monotony. It is therefore intended that setbacks may be staggered, where appropriate, so as to preserve trees and to assure vistas of open areas. The Developer reserves the right to approve the location of each Building or other structure on each Site and to arrange the same in such manner as it shall deem in the interests of the overall development. No building or structure, or any part thereof, shall be located on any Residential Unit nearer to the front line nor to a side street than the minimum setback lines shown on the Plan. Interior Residential Units shall provide the minimum side yard provided on the Plan. For the purpose of determining compliance with the minimum setback requirements, eaves, open or covered stoops, and steps extending beyond the front wall of a structure shall not be considered as a part thereof.

7.2. **Building Size.** The total floor living area of the main structure upon any Lot, exclusive of the open porches, patios, garages, carports, and breezeways, shall comply with the maximum and minimum ratios of land to building area as shown on the recorded Plan.

7.3. **Excavation.** No Owner shall excavate or extract earth from any of the Residential Units, or any portion of the Properties subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which will materially affect the surface grade of surrounding Site except to the extent that fill may be required on certain Residential Units as shown on the recorded Plan. All fill shall be subject to the approval of the SARB, as to the nature of the fill employed and as to the manner and methods of installation.

7.4. **Modifications to Residential Units.** Contiguous Residential Units may be combined if the Residential Units have the same Owner for the purpose of placing an approved Building thereon. Thereafter, such Residential Units, as combined, shall, for purposes of this Declaration, be considered as one Residential Unit. Individual Residential Units or a combination of contiguous Residential Units may not be resubdivided so as to increase the number of Residential Units that existed prior to such resubdivision.

7.5. **Fences and Walls.** Boundary walls may be erected, provided that the same are set back from the street at least as far as the front building line.

7.6. **Driveways and Parking, Garages.** Motor vehicles owned by any Owner, or by any person occupying a Residential Unit, shall be parked on the driveways provided for such purpose. No parking shall be allowed on the streets located within the Properties; provided, however, that upon written approval from the Association after demonstrating that the driveway and parking facilities for his Residential Unit are not sufficient, an Owner may park certain motor vehicles designated to the Association on that portion of the street directly in front of his Residential Unit. Where there are side or rear alleys along any Residential Unit, the driveway for such Residential Unit must be off of such alley. Where there are no side or rear alleys along a Residential Unit, the driveway shall be off of the street in front of the Residential Unit and the driveway must be constructed without removing or modifying the existing curb for the street. All front entry garages must be approved as to design and material by the SARB. Every garage door shall be equipped with a remote controlled garage door opener and every garage door shall be kept closed except when the garage is being entered or exited. All driveways shall be paved with a hard surface material.

7.7. **Sheds and Outbuildings, Service and Storage Areas.** No outbuildings or storage areas are allowed in front or side yards, or in the backyard setback. No exposed metal sided or concrete block structures are allowed. Temporary structures such as a tent shall be permitted to be erected upon a Residential Unit for the purpose of recreation or entertainment, provided such structures are removed within a reasonable period of time.

7.8. **Swimming Pools.**

7.8.1. Swimming pools, bath houses, and associated equipment are not allowed within the rear yard setback and may be sited within the side yard setback only when siting does not interfere with the privacy of adjacent properties, as determined by the SARB.

7.8.2. No above ground pools will be permitted. No pool may have a high diving board. The SARB shall determine the permissible height of the diving board.

7.8.3. Pool and equipment enclosures must relate to the Building and other structures in terms of architectural style, placement, mass and detail.

7.8.4. Night lighting for pools must not be directed toward any adjacent properties.

7.8.5. Owners shall be responsible for complying with all building codes in constructing swimming pools.

7.9. **Garage Sales.** Sales of personal property on the premises by "garage sales," "patio sales" and similar sales to the general public are prohibited, unless approved by the Board of Directors in cases involving hardship.

7.10. **Lighting.** No exterior lighting may be directed off a Residential Unit. Flood lighting is not permitted where exposed to adjacent properties or streets. Illumination necessary for evening activities must be directed downward and be only bright enough to provide for the safe traverse of steps and paths.

7.11. **Signage and Decorations.** Address markers and mail boxes are restricted to those designated by the SARB. Security and other notices, such as "beware of dog", must not be made of highly reflective materials or with bright colors.

7.12. **Utilities.** No overhead utility lines may be installed or built on a Residential Unit. No Building or outbuilding may be cooled or heated by window air conditioning units. Heat pumps, compressors, and other utilities must be screened with plant material, fences or walls. Clotheslines are not permitted. Incinerators for garbage, trash or other refuse shall not be erected on any Residential Unit.

7.13. **Satellite Dishes and Solar Panels.** No satellite dish may be installed on any Residential Unit or Building. No solar panels or collectors may be installed on the roof of a Building or any structure on a Residential Unit if such panels or collectors are visible from adjoining Residential Units or streets.

7.14. **Pets and Pet Facilities.**

7.14.1. Pet facilities are restricted to the rear yard, consistent with the setback requirements. Chain link fences will only be approved to enclose pen areas for household pets. The entire fence must be sufficiently screened by informal plantings to block views from adjacent properties or streets. The chain link must be painted black or black vinyl. All pet facilities must be maintained and kept clean and free of offensive odors.

7.14.2. No animals, livestock or poultry of any kind shall be raised, bred, pastured or maintained on any Residential Unit, except household pets which shall be kept in reasonable numbers as pets for the sole pleasure of the occupants, but not for any commercial purpose or use. Owners shall use reasonable efforts to insure that their pets at all times remain inside of the boundaries of the Owner's Residential Unit unless accompanied by their owners and on a leash and to insure that their pets are not a noise nuisance to the neighborhood. The Association, or any individual resident, may take appropriate measures to insure compliance with this provision, including having the animal picked up by the the appropriate governmental agency or authorities.

7.15. **Tennis Courts.** Tennis courts are restricted to the rear or side yard consistent with the setback requirements. Courts must be built in a manner and location that does not require extensive grading, tree removal or the construction of raised decks. No night lighting of courts is allowed which is directed toward an adjacent property. Surface colors are be restricted to soft colors and are not to be highly reflective.

7.16. **Hobbies and Activities.** The pursuit of hobbies or other inherently dangerous activities, including without limitation, the assembly and disassembly of motor vehicles or other mechanical devices, the shooting of firearms, fireworks, or pyrotechnic devices of any type or size, and other such activities shall not be pursued or undertaken on any part of any Residential Unit or upon the Common Areas without the written consent of the Association.

7.17. **Maintenance.** All Residential Units, together with the exterior of all improvements located thereon, shall be maintained in a neat and attractive condition by their respective Owners; provided, however, that the Association shall be responsible for cutting the front lawns of Residential Units within the Properties.

7.18. **Nuisances and Unsightly Materials.** No Building or other structure on any Residential Unit shall be used for any commercial or business purpose. Each Owner shall refrain from any act or use of his Residential Unit which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No noxious, offensive or illegal activity shall be carried on upon any Residential Unit. Boats must be stored in enclosed areas and must not be visible from neighboring Residential Units, streets, roads or open areas. No motorcycle, motorbike or motor scooter shall be permitted to be operated in the streets of the Properties except for the purpose of travel outside of the Property and such use shall be by the most direct route available. No all terrain vehicles, such as "dirt bikes", "three or four wheelers", or similar motorized vehicles, nor "go-carts", shall be permitted to be operated on any Residential Unit, or the Common Areas, or any portion of the Properties.

7.19. **Speeding.** Any vehicle moving in excess of the posted speed on streets within the Properties shall be considered as speeding and the owner and/or operator of said vehicle will be subject to any fine levied by the Association.

7.20. **Fires and Burning.** No outside fires for burning of leaves, tree limbs or for any other purpose shall be permitted on a Residential Unit or in the Common Areas;

provided, however, fires in outdoor grills for the purpose of cooking shall be permitted on a Residential Unit.

7.21 **Lawns.** All front yards shall be sodded. All front yards and any side yard not enclosed shall have an automatic underground irrigation system which the Owner shall keep in good operating use and repair. "Front yard" shall mean and refer to that portion of a Lot which extends from the forward or front boundary line of the Lot up to the exterior front walls, stoop, porch and entries of the Building on said Lot and up to any fence or gate extending from said Building to the common boundary line with an adjacent Lot (or in the event there is no fence or gate, up to a straight line created by extending the front of the Building to a common boundary line with an adjacent Lot). "Side yard" shall mean and refer to that portion of a Lot which extends from a side boundary line of the Line up to the exterior side walls, stoop, porch and entries of the Building on said Lot between the straight lines created by extending the front and rear of the Building to a common boundary line with an adjacent Lot.

ARTICLE VIII

Easements and Common Areas

8.1. **General.** Until termination of the Class B Membership, Developer reserves an easement for ingress and egress generally across the Properties at reasonable places on the Properties and all Residential Units for the purpose of completing Developer's intended development and construction. Said ingress and egress easement shall in any event be reasonable and shall not interfere with the construction of improvements on a Residential Unit nor the use and enjoyment of a Residential Unit by an Owner.

8.2. **Emergency.** There is hereby reserved without further assent or permit a general easement over all roads shown on the Plan to all policemen and security guards employed by Developer, firemen, ambulance personnel, garbage collectors, mail carriers, utility personnel, delivery service personnel and all similar persons to enter upon the Properties or any portion thereof which is now or hereafter made subject to this Declaration in the performance of their respective duties. Included in the persons designated to have access to the premises are all police and fire officers of the Metropolitan Government of Nashville and Davidson County, Tennessee.

8.3. **Common Areas Shown on the Plan.** The Plan contains certain designated Common Areas. The Common Areas are hereby established as perpetual and irrevocable easements and are granted and reserved for the use and benefit in common of all Owners of the Properties and their agents, servants, family members and invitees. The Common Areas shall be owned, maintained and regulated by the Association. The Developer shall, by quitclaim deed, convey the Common Areas to the Association. Use of the Common Areas shall be subject to and governed by the provisions of this Declaration, the Bylaws, and such rules and regulations as may be imposed by the Association.

8.4. **No Rights Established for the General Public.** The Common Areas and in particular the streets of the Properties, as shown on the Plan, are not public areas or

thoroughfares and no rights in the general public are intended to be created hereby or by the recording of the Plan. The streets are private thoroughfares to be owned, maintained, operated and controlled by the Association. The Metropolitan Government of Nashville and Davidson County, Tennessee has no responsibility for maintenance, repair or replacement of the streets. The Developer and/or the Association reserves the right to control access to the Properties by entry onto the streets of the Properties or otherwise. The Developer and/or the Association reserves the right to deny entry and access into the Properties to any persons who are not authorized to use the streets of the Properties pursuant to this Declaration. Soliciting within the Properties is expressly prohibited.

8.5. **Easements for Drainage and Utilities.** Portions of the Residential Units are encumbered with drainage, water, sewer and/or other easements as shown on the Plan, and such easements are declared to be perpetual and irrevocable and for use in common by all Residential Unit Owners for drainage or for utilities. Developer reserves the right to transfer all or any portion of such areas to the appropriate governmental authority.

ARTICLE IX

Maintenance of Residential Units

9.1. If in the opinion of the SARB any Residential Unit or the improvements thereon is not maintained in a manner reasonably consistent with the degree of maintenance of Residential Units in a first-class residential development and reasonably consistent with the aesthetic quality of the Properties, the Association or Developer upon the request of the SARB, after first giving the Owner of the Residential Unit and the improvements thereon thirty (30) days notice, may take all actions necessary to achieve such degree of maintenance of said Lot, and the Owner shall pay the cost thereof to the Association upon demand. If the Owner fails to pay the same upon demand, such sum may be collected from the Owner as an assessment or charge pursuant to Article IV hereof; provided, however, in the event said Owner commences maintenance of said Residential Unit or the improvements thereon within thirty (30) days after said notice and pursues the completion of said maintenance with reasonable diligence, but in any event to be completed within sixty (60) days after said notice, the Association shall not take any of the aforesaid actions.

ARTICLE X

Sale or Lease of Residential Units

10.1. **Right of First Refusal.** All Residential Units are conveyed by the Developer with the understanding and agreement that any Owner who desires to sell or lease any Residential Unit or Units, either improved or unimproved, shall first offer the same for sale or lease to Developer or, after termination of the Class B membership, to the Association at the same price and on the same terms at which the highest bona fide offer has been made to the Owner therefor. An Owner desiring to sell or lease any Residential Unit shall give Developer or the Association, as the case may be, notice via certified mail, return receipt requested, of his desire to sell or lease such Residential Unit(s), together with such other information as may be requested. Within seven (7) days thereafter, Developer or

the Association, as the case may be, may (i) approve the transaction; (ii) furnish a purchaser or lessee approved by the Association who will accept the transaction upon terms as favorable as those stated in the notice; (iii) fail to respond in which event the transaction will be deemed approved. The right of first refusal granted by this Declaration to Developer and subsequently the Association shall be a continuing right binding upon each subsequent Owner even though the right may not be exercised by Developer or subsequently the Association with regard to any proposed sale and shall extend to the Developer until the termination of the Class B membership and thereafter the Association shall automatically succeed to Developer's rights under this Section 1 for the remaining duration of this Declaration. This right of first refusal does not apply to a Mortgagee upon the exercise of any power of sale or upon the Mortgagee becoming the Owner of a Residential Unit as a result of the exercise of any power of sale. When a Mortgagee who has become an Owner conveys a Residential Unit, this right of first refusal shall become binding upon the purchaser of a Residential Unit from a Mortgagee in the event that purchaser desires to sell the Residential Unit. Provided, however, that in any event such sale or lease shall remain subject to the covenants and restrictions of this Declaration.

10.2. **Sales and Resales.** In order to preserve and protect the decorum of the community, Developer reserves the right to restrict the advertising and placement of signs on or relating to properties for sale or resale within the Properties. No signs indicating that a Residential Unit or Units is for sale or for lease will be permitted on any Residential Unit or Units except that (i) the Developer or its designated sales agent may place signs on undeveloped Lots and (ii) one sign approved by the SARB may be placed upon any Lot having a Building constructed thereon which is not occupied for purposes of the first sale of that Lot only. This does not preclude an Owner from using media advertising. No sale of a Residential Unit or Units by auction, public or private, may be conducted on any Residential Unit or elsewhere within the Properties. The right retained by the Developer herein shall continue for a period of ten (10) years from the date hereof. Thereafter, this right shall be exercisable by the Association through its Board of Directors.

ARTICLE XI

General Provisions

11.1. **Duration.** These restrictions shall be appurtenant to and run with the land and shall be binding upon all Owners and parties hereinafter having an interest in any of the Properties and all parties claiming under them for a period of ninety-nine (99) years from the date of the filing of this Declaration.

11.2. **Enforcement.** (a) All restrictions herein may be enforced by Developer, its successors and assigns until the termination of the Class B Membership, or by the Association, by proceeding at law or in equity against the person, firm or other entity violating or attempting to violate any covenant or covenants, either to restrain the violation thereof or to recover damages, together with reasonable attorneys' fees and court costs. Further, after the termination of Developer's Class B Membership in the Association, in the event the Association fails to act to enforce any restriction herein, any Owner of any Residential Unit may enforce these restrictions as aforesaid against any other Owner,

except, however, the covenants contained in Article 10.1 hereof regarding the Developer's right of first refusal shall be enforceable only by Developer and not by its successors or assigns unless specifically assigned thereunto by Developer in writing.

(b) In the event that the Association, or any maintenance, recreational, homeowners or other association or organization established to own and maintain Common Area, or any successor association or organization, shall at any time fail to maintain the Common Area in reasonable order and condition in accordance with the adopted final master development plan for the Whitworth development approved by the Planning Commission for the Metropolitan Government of Nashville and Davidson County, Tennessee ("Metro"), the Zoning Administrator for Metro may serve written notice upon such association or organization and/or the Owners or residents of the development and hold a public hearing. If such deficiencies in maintenance in the Common Area in question are not corrected within thirty (30) days, then the Zoning Administrator shall have the right to call upon any public or private agency to maintain the Common Area in question for a period of one year. Thereafter, if the Zoning Administrator determines that such association or organization is not prepared for the maintenance of the Common Area in question, such agency shall continue maintenance for yearly periods. The cost of such maintenance by such agency shall be assessed proportionately against the Residential Units within the development that have the responsibility for such maintenance of the Common Area in question and shall become a lien on said Residential Units.

11.3. **Partial Invalidity.** Any invalidation of any one or more of these restrictions by judgment, court order, or statute, or failure on the part of Developer or its successors or assigns to enforce any of said restrictions, shall in no way affect any of the other provisions hereof or be deemed as a waiver of the right to enforce such restrictions any time after the violation thereof.

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

11.5. **Exoneration of Developer, SARB, Board and Officers.** Each Owner of any Residential Unit in the Properties or any other party interested in the Properties expressly agrees that:

11.5.1. No duty or obligation is imposed upon Developer to enforce or attempt to enforce any of the covenants or restrictions contained herein, nor shall Developer be subject to any liability of any kind or nature whatsoever to any third party from failing to enforce the same; and

11.5.2. The SARB's approval of any building plans, specifications, site or landscape plans or elevations, or any other approvals or consents given by the SARB

pursuant hereto or otherwise shall not be deemed a warranty, representation or covenant that any such Buildings, improvements, landscaping or other action taken pursuant thereto or in reliance thereon complies with any or all applicable laws, rules, building codes requirements or regulations, the sole responsibility for all of same being upon the respective Owner; and Developer and the SARB are expressly released and relieved of any and all liability in connection therewith. Each Owner with respect to the improvements on said Owner's Residential Unit agrees to indemnify and hold the Developer and the SARB harmless from all loss or damage, including reasonable attorneys' fees, incurred by Developer or SARB as a result of any suit or claim made by any party concerning any feature of construction of any improvements made on said Owners' Residential Unit, the noncompliance thereof with such laws, rules, building codes requirements or regulations, or further, any suit or claim made by any injured or alleged injured party claiming to have been damaged or injured by any failure in the structure of any completed improvement or any negligence in design or workmanship of any component of such completed improvements on such Residential Unit.

11.5.3. The Board of the Association, officers of the Association, and members of the SARB shall not be personally liable to the Owners for any mistake of judgment or for any acts or omissions of any nature undertaken in the performance of their respective duties with regard to the Association except for acts or omissions found by a court of competent jurisdiction to constitute gross or willful negligence or fraud.

11.6. **Other Lands of Developer.** Nothing contained within these restrictions shall be held or construed to impose any restrictions, covenants, or easements on any other land of the Developer, except for the land contained within the description of the Properties, unless specifically submitted to and included within this Declaration as provided in Article XIII hereof.

ARTICLE XII

Amendment

12.1. The terms, provisions, conditions, covenants and restrictions of this Declaration may be amended by the Developer, without joinder of any Lot Owner, for a period of ten (10) years from the date hereof; thereafter, by agreement signed by at least two-thirds (2/3) of the Owners whose Residential Units are then subject hereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Every purchaser or subsequent grantee of any interest in any property now or hereafter made subject to this Declaration by acceptance of a deed or other conveyance therefor, thereby agrees that the terms, provisions, conditions, covenants and restrictions of this Declaration may be amended as provided herein.

12.2. For so long as Developer owns all or any portion of the Properties, no amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege.

ARTICLE XIII

Annexation of Additional Property and Further Development of Properties

13.1. **Annexation of Additional Property.** Developer shall have the unilateral right, privilege, and option, from time to time and at any time until twenty (20) years from the anniversary of the filing of this Declaration to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described on Exhibit "C" attached hereto and by reference made a part hereof, by filing in the Davidson County, Tennessee, Register's Office a document annexing such additional property and submitting it to the terms of this Declaration. Such document shall not be deemed to be an amendment to this Declaration requiring the vote of Members or the agreement of Owners and, to this extent, the requirements of Section 12.1 above shall not be applicable to the rights of Developer set forth herein. Any such annexation shall be effective upon the filing for record of such document unless otherwise provided therein.

13.2. **Further Development of the Properties.** The Properties will be developed in several phases which may include various types of residential properties, including single family detached houses, townhouses, cluster homes and condominiums. This Declaration applies to all the Properties made subject to this Declaration, but nothing contained in this Declaration shall be construed to prevent additional covenants, conditions and restrictions from being imposed upon any portion of the Properties as are not inconsistent with the scheme of this Declaration, including but not limited to the submission of any portion of the Properties to the Horizontal Property Act of the State of Tennessee for the purpose of creating and establishing a horizontal property regime thereon. Additional maintenance associations, recreational associations, homeowner's associations or condominium associations may be established for the purpose of carrying out the terms of such additional covenants, conditions and restrictions, or horizontal property regime. Developer may designate land anywhere within the Properties as common area, construct recreational facilities or other improvements thereon, and convey such land and facilities to any such additional associations. Developer may designate land anywhere within the Properties as a Condominium Site so that the same may be submitted to the provisions of the Tennessee Horizontal Property Act for the purpose of creating and establishing a horizontal property regime, condominium units and other improvements may be constructed thereon, and condominium associations may be established for the maintenance of common elements. The formation of such additional associations, however, shall not relieve any Owner from his obligation to pay assessments as provided in this Declaration to the Association; provided, the Association may arrange for the additional associations to collect the assessments due the Association as provided for in this Declaration.

Developer shall have the unilateral right, privilege and option, from time to time and at any time, to subject any portion of the Properties to such additional covenants, conditions and restrictions, including but not limited to the submission of any portion of the Properties to the Horizontal Property Act for the State of Tennessee for the purpose of creating and establishing a horizontal property regime thereon, to establish any additional associations Developer deems necessary or desirable in order to carry out the terms and provisions of such covenants, conditions and restrictions or horizontal property regime, and

to designate land anywhere within the Properties as common area, construct improvements thereon and convey said land and facilities to such associations. Such action on the part of Developer shall not be deemed to be an amendment to this Declaration which requires the vote of Members or the agreement of Owners and to this extent, the provisions of Section 12.1 above shall not be applicable to such action on the part of Developer. Any such covenants, conditions or restrictions that conflict with those contained in this Declaration shall be void, and the covenants, conditions and restrictions contained in this Declaration shall control.

Specifically, but without in any way limiting the rights, privileges and options provided to and reserved by the Developer in this paragraph 13.2, while no recreational facilities are currently planned to be located within the Properties for so long as the Members have access to the Whitworth Tennis Club proposed to be developed on property adjacent to the Properties, in the event that for whatever reason such access terminates or ceases to exist, then the Developer reserves and shall have the right and option, but shall not be obligated, to locate and designate land anywhere within the Properties as Common Area, construct such recreational facilities and other improvements thereon as Developer in its sole discretion deems necessary or desirable to serve the Properties, and convey such land and facilities to the Association or such other recreational association as it shall designate for the common use and enjoyment of the members thereof.

The Association may contract with any additional association or condominium association established hereunder for the purpose of accomplishing the obligations set forth in this Declaration.

13.3. **Amendment.** This Article XIII shall not be amended without the written consent of Developer for so long as Developer owns any of the property described in Exhibits "A" or "C" attached hereto.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Protective Covenants, Conditions and Restrictions to be duly executed this 7TH day of DECEMBER, 1989.

RCC ASSOCIATES, L.P.,
a Delaware limited partnership,

Rickard Properties, Inc. G.P.

By: [illegible]

Its: V.P.

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, a Notary Public in and for the State and County aforesaid, G. H. Christianson, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself to be the Vice President of the General Partner of RCC Associates LP, a Delaware limited partnership, the within named bargainor, and who acknowledged that he as such Vice President, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the limited partnership by himself as Vice President.

WITNESS my hand and seal at Nashville, Tennessee, this the 7th day of December, 1989.

Kim H. Hudson
NOTARY PUBLIC

My commission expires: 3/3/92

EXHIBIT A

LEGAL DESCRIPTION
WHITWORTH PHASE ONE SUBDIVISION

Being a tract of land in Nashville, Davidson County, Tennessee, said tract being the Phase One Subdivision limits and being a portion of the Whitworth Planned Unit Development Final Plat as of record in Deed Book 6900, Pages 839, 840, and 841, R.O.D.C., and being more particularly described as follows:

Beginning at a concrete monument (old) located at the southwest corner of the Elmington Condominiums as recorded in Deed Book 4660, Page 60, R.O.D.C.;

Thence, S78°10'11"W, 354.74 feet, to a point where the old existing right-of-way of Elmington Avenue formerly ended and the westerly right-of-way of new Elmington Avenue begins;

Thence, along the said right-of-way of Elmington Avenue (same having a total right-of-way of 60.00 feet), and with a curve to the left having a radius of 740.00 feet, a deflection angle of 17°26'20", a tangent length of 113.49 feet, a chord length of 224.36 feet, a chord bearing of S17°13'54"E, for an arc distance of 225.23 feet, to an iron pin (new) located at a point on the curve, same being the point of beginning;

Thence, continuing along said right-of-way curve to the left with a radius of 740.00 feet, a deflection angle of 42°35'48", a tangent length of 288.49 feet, a chord length of 537.57 feet, a chord bearing of S47°14'58"E, for an arc length of 550.15 feet, to a concrete monument (new);

Thence, S68°32'52"E, 177.83 feet, to a concrete monument (new);

Thence, with a curve to the right having a radius of 1050.00 feet, a deflection angle of 25°08'57", a tangent length of 234.21 feet, a chord length of 457.19 feet, a chord bearing of S55°58'23"E, for an arc distance of 460.88 feet, to a concrete monument (new);

Thence, S43°23'55"E, 176.77 feet, to a concrete monument (new);

Thence, with a curve to the left having a radius of 740.00 feet, a deflection angle of 44°30'01", a tangent length of 302.74 feet, a chord length of 560.40 feet, a chord bearing of S65°38'56"E, for an arc distance of 574.74 feet to a concrete monument (new);

Thence, S87°53'56"E, 10.44 feet, to a concrete monument (new);

Thence, leaving said Elmington Avenue right-of-way with a curve to the right having a radius of 25.00 feet, a deflection angle of 90°00'00", a tangent length of 25.00 feet, a chord length of 35.36 feet, a chord bearing of S42°53'55"E, for an arc distance of 39.27 feet, to a concrete monument (new), located at the new western right-of-way of Sharondale Avenue;

Thence, along said new Sharondale Avenue right-of-way S02°06'05"W, 220.22 feet, to a point;

Thence, leaving said right-of-way N87°28'45"W, 402.32 feet, to a point;

Thence, S67°05'21"W, 71.14 feet, to a point;

Thence, S55°20'00"W, 321.81 feet, to a point;

Thence, S72°28'01"W, 147.79 feet, to a point;

Thence, N09°56'14"W, 334.31 feet, to a point;

Thence, S69°41'35"W, 31.60 feet, to a point;

Thence, N52°00'00"W, 284.25 feet, to a point;

Thence, S33°30'00"W, 105.71 feet, to a point, said point being on a curve on the east easement line of Greenview Drive (private);

Thence, along said easement with a curve to the right having a radius of 265.00 feet, a deflection angle of 05°22'28", a tangent length of 12.44 feet, a chord length of 24.85 feet, a chord bearing of S49°41'14"E, for an arc distance of 24.86 feet, to a concrete monument (new);

Thence, S47°00'38"E, 190.36 feet, to a concrete monument (new);

Thence, with a curve to the right having a radius of 265.04 feet, a deflection angle of 22°02'24", a tangent length of 51.61 feet, a chord length of 101.32 feet, a chord bearing of S35°58'48"E, for an arc distance of 101.95 feet, to a concrete monument (new);

Thence, S24°00'55"E, 7.92 feet, to a concrete monument (new);

Thence, with a curve to the right having a radius of 79.00 feet, a deflection angle of 180°00'00", a chord length of 158.00 feet, a chord bearing of S66°00'00"W, for an arc distance of 248.19 feet, to a concrete monument (new);

Thence, N24°00'00"W, 169.52 feet, to a concrete monument (new);

Thence, with a curve to the left having a radius of 185.00 feet, a deflection angle of 13°13'12", a tangent length of 21.44 feet, a chord length of 42.59 feet, a chord bearing of N30°36'36"W, for an arc distance of 42.69 feet, to a point on the curve;

Thence, leaving said Greenview Drive (private) easement line, S44°25'01"W, 444.55 feet, to a point;

Thence, N0°32'19"E, 54.20 feet, to a corner stone (old);

Thence, N64°42'29"W, 1010.54 feet, to an iron pin (old);

Thence, S65°00'24"W, 48.22 feet, to an iron pin (old);

Thence, S30°56'33"W, 138.66 feet, to an iron pin (old);

Thence, S71°12'19"W, 31.18 feet, to a concrete monument (old), said monument located on the north right-of-way of Valley Vista Drive;

Thence, N65°38'52"W, 77.20 feet, to a point on the east right-of-way of Bowling Avenue;

Thence, N01°17'20"E, 324.43 feet, to a concrete monument (old);

Thence, N03°57'40"E, 35.47 feet, to a point;

Thence, leaving said Bowling Avenue right-of-way S86°16'50"E, 157.73 feet, to a point;

Thence, S01°17'20"W, 39.72 feet, to a point, said point located on the north easement line of Whitworth Boulevard (private);

Thence, continuing along said Whitworth Boulevard easement with a curve to the right having a radius of 320.00 feet, a deflection angle of 29°09'26", a tangent length of 83.23 feet, a chord length of 161.09 feet, a chord bearing of S70°47'23"E, for an arc distance of 162.85 feet, to a point;

Thence, S56°12'40"E, 306.55 feet, to a point;

Thence, with a curve to the left having a radius of 430.00 feet, a deflection angle of 27°30'00", a tangent length of 105.22 feet, a chord length of 204.41 feet, a chord bearing of S69°57'40"E, for an arc distance of 206.39 feet, to a point;

Thence, S83°42'41"E, 36.79 feet, to a point;

Thence, with a curve to the right having a radius of 400.00 feet, a deflection angle of 09°49'29", a tangent length of 34.38 feet, a chord length of 68.51 feet, a chord bearing of S78°47'56"E, for an arc distance of 68.59 feet, to a point on the curve;

Thence, leaving said Whitworth Boulevard (private) easement N16°20'32"E, 112.64 feet, to a point;

Thence, N75°34'50"W, 141.31 feet, to a point;

Thence, N66°39'27"W, 117.54 feet, to a point;

Thence, N76°23'58"W, 40.79 feet, to a point;

Thence, N26°41'45"E, 155.49 feet, to a point;

Thence, N48°00'50"E, 128.17 feet, to a point;

Thence, N47°59'39"E, 78.33 feet, to a point;

Thence, N39°37'54"E, 70.87 feet, to a point;

Thence, N12°41'02"E, 205.56 feet, to a point;

Thence, N04°03'41"E, 74.67 feet, to a point;

Thence, N12°23'04"E, 184.21 feet, to a point;

Thence, N77°18'27"W, 45.32 feet, to a point;

Thence, N12°39'51"E, 118.29 feet, to a point;

Thence, N03°55'16"W, 49.00 feet, to a point;

Thence, N81°29'01"E, 146.86 feet, to the point of beginning, containing 38.65 acres, more or less.

EXHIBIT "B"

BYLAWS

OF

WHITWORTH OWNERS' ASSOCIATION

ARTICLE I

Members

Section 1. **Members.** Every person or entity who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Residential Unit.

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

(a) **Class A.** Class A Members shall be all Owners, except for Developer prior to termination of his Class B Membership. If, however, Developer owns one or more Residential Units upon or after the termination of the Class B Membership, then Developer shall become a Class A Member.

(b) **Class B.** The Class B Membership shall be the Developer, its successors or assigns. The Class B Membership shall terminate and cease upon the first to occur of the specific written termination by Developer or September 1, 2003.

Section 3. **Succession.** The Membership of each Owner shall terminate when he ceases to be an Owner, and upon the sale, transfer or other disposition of his ownership interest in a Residential Unit, his Membership in the Association shall automatically be transferred to the new Owner succeeding to such ownership interest.

Section 4. **Regular Meetings.** The first regular annual meeting of Owners (the "First Meeting"), subject to the terms hereof, shall be held within one hundred twenty (120) days after Developer has sold and delivered its deed for at least one hundred (100) Lots or three (3) years following the date of recording the Declaration, whichever shall first occur. Subsequent to the First Meeting, there shall be a regular annual meeting of Owners within fifteen (15) days after the end of each fiscal year of the Association. All such meetings of Owners shall be held at such place in Davidson County, Tennessee, and at such time as specified in the written notice of such meeting which shall be delivered to all Owners at least ten (10) days prior to the date of such meeting.

Section 5. **Special Meetings.** Special meetings of all Owners may be called by the President or by a majority of the Members of the Board, or by Owners having at least three-fifths (3/5) of the votes entitled to be at such meeting. Said special meetings shall be called by delivering written notice to all Owners not less than ten (10) days prior to the date of said meeting, stating the date, time and place of said special meeting and the matters to be considered.

Section 6. **Delivery of Notice of Meetings.** Notices of meetings may be delivered either personally or by mail to an Owner at the address given to the Board by said Owner for such purpose.

Section 7. **Voting.**

(a) **Class A.** Except for matters concerning special assessments and amendments to this Declaration, Class A Members shall not be entitled to vote until the termination of the Class B Membership, at which time Class A Members shall be entitled to one vote for each Residential Unit owned in the Properties. The vote for any one Residential Unit owned by more than one person or entity shall be exercised as they among themselves shall determine, but in no event shall the vote or votes with respect to any jointly owned Residential Unit be cast separately.

(b) **Class B.** Except for special assessments and amendments to the Declaration, the Class B Member (Developer) shall be the only Member entitled to vote in the Association until such time as the Class B Membership shall cease.

(c) **Special Assessments and Amendments.** On all matters concerning a special assessment relating to the Common Areas or an amendment to the Declaration, the voting shall, prior to termination of the Class B Membership, be as follows:

(i) **Class A.** The Class A Members shall have one (1) for each Residential Unit owned.

(ii) **Class B.** The Class B Member shall have four (4) votes for each Residential Unit owned.

Section 8. Quorum. A quorum of Owners for any meeting shall be constituted by Owners represented in person or by proxy and holding a majority of the votes entitled to be cast at such meeting.

ARTICLE II

Board of Directors

Section 1. Number, Election and Term of Office. The Board of Directors of the Association (referred to herein as the "Board") shall consist of five (5) members (herein referred to as "Directors" or "Members of the Board"). Four (4) Directors shall be elected at each regular annual meeting of Association members by the vote of Owners. Prior to the First Meeting, the Developer shall appoint five (5) interim Members of the Board (the "Interim Board") to hold office until the First Meeting, and thereafter, the Developer shall be entitled, at its option, to appoint one Board Member who does not have to be an Owner. The Interim Board during its existence shall have all powers of the Board as contained in these Bylaws. The First Meeting shall, among other business, elect the other four (4) Members of the Board (the "First Board") or shall elect five (5) members if the Developer waives the right to appoint a member. Those candidates for election as Director receiving

the greatest number of votes cast either in person or by proxy at the meeting shall be elected. Members of the Interim Board shall hold office until the First Meeting. Two (2) Members of the First Board shall hold office until the first regular annual meeting of Association members after the First Meeting, and two (2) other members of the First Board shall hold office until the second regular annual meeting of Association members after the First Meeting. The member appointed by the Developer shall hold office at the pleasure of the Developer. In the event the Developer waives the right to appoint a member, such member shall be elected to hold office for one (1) year or until the next annual meeting of Association members.

Section 2. **Qualification.** Except for members of the Interim Board, and the Director appointed by the Developer, each Director shall be an Owner. If a Director shall cease to meet such qualifications during his term, he shall thereupon cease to be a Director and his place on the Board shall be deemed vacant.

Section 3. **Vacancies.** Any vacancy occurring in the Board shall be filled by majority vote of the remaining members thereof. Any Director so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the Director which he succeeds. In the event the Developer does not desire to appoint a Director, the Board shall, by majority vote, fill such vacancy for a term of one (1) year at a time.

Section 4. **Meetings.** A regular annual meeting of the Board shall be held not less than ten (10) days following the regular annual meeting of Owners. Special meetings of the Board shall be held upon a call by the President or by a majority of the Board on not less than forty-eight (48) hours' notice in writing to each Director, delivered personally or by mail or telegram. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Board without a meeting. A Director's attendance at a meeting shall constitute his waiver of notice of said meeting.

Section 5. **Removal.** Any Director may be removed from office for cause by the vote of three-fifths (3/5) of the total vote of the Owners.

Section 6. **Compensation.** Directors shall receive no compensation for their services as Directors, unless expressly provided for in resolutions duly adopted by the Owners.

Section 7. **Quorum.** Three (3) Directors shall constitute a quorum.

Section 8. **Powers and Duties.** The Board shall have the following powers and duties:

(a) to elect and remove the Officers of the Association as hereinafter provided;

(b) to administer the affairs of the Association and the Common Areas, including the purchasing of casualty and liability insurance covering the Common Areas, the Association, the Board and officers;

(c) to formulate policies for the administration, management and operation of the Common Areas;

(d) to adopt rules and regulations, with written notice thereof to all Owners, governing the administration, management, operation and use of the Common Areas;

(e) to provide for the maintenance, repair, and replacement of the Common Areas and other expenses authorized by the Covenants and payments therefor, and to approve payment vouchers or to delegate such approval to the Officers;

(f) to provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Common Areas and other expenses authorized by the Covenants;

(g) to appoint committees of the Board and to delegate to such committees the Board's authority to carry out certain duties of the Board;

(h) to determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deems advisable;

(i) to estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Owners their respective shares of such estimated expenses, as hereinafter provided;

(j) unless otherwise provided herein or in the Covenants, to comply with the instructions of a majority of the Owners, as expressed in a resolution duly adopted at any annual or special meeting of the Owners;

Section 9. **Non-Delegation.** Nothing in this Article or elsewhere in these Bylaws shall be considered to grant to the Board, the Association or to the Officers of the Association any powers or duties which, by law, have been delegated to the Owners.

ARTICLE III

Officers

Section 1. **Designation.** At each regular annual meeting, the Directors present at said meeting shall elect the following Officers of the Association by a majority vote:

(a) a President, who shall be a Director and who shall preside over the meetings of the Board and of the Owners, and who shall be the chief executive officer of the Association;

(b) a Secretary, who shall keep the minutes of all meetings of the Board and of the Owners, and who shall, in general, perform all the duties incident to the office of Secretary;

(c) a Treasurer, who shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported; and

(d) such additional Officers as the Board shall see fit to elect.

Section 2. **Powers.** The respective Officers shall have the general powers usually vested in such Officers; provided that the Board may delegate any specific powers to any other Officer or impose such limitations or restrictions upon the powers of any Officer as the Board may see fit.

Section 3. **Term of Office.** Each Officer shall hold office for the term of one (1) year and until his successor shall have been appointed or elected and qualified.

Section 4. **Vacancies.** Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of said Board. Any officer so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the Officer he succeeds. Any Officer may be removed for cause at any time by vote of three-fifths (3/5) of the total members of the Board at a special meeting thereof.

Section 5. **Compensation.** The Officers shall receive no compensation for their services as Officers.

ARTICLE IV

Assessments

Section 1. **Annual Budget.** The Board shall cause to be prepared an estimated annual budget for each fiscal year of the Association, said fiscal year to be determined by the Board. Such budget shall take into account the estimated expenses and cash requirements for the year, including but not limited to salaries, wages, payroll taxes, legal and accounting fees, working capital fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, and all other expenses for carrying out the duties of the Association. To the extent that the assessments and other cash income collected from the Owners during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account. The annual budget shall provide for a reserve for contingencies for the year and a reserve for replacements, in reasonable amounts as determined by the Board.

Section 2. **Assessments.** The estimated annual budget for each fiscal year shall be approved by the Board, and copies thereof shall be furnished by the Board to each Owner, not later than thirty (30) days prior to the beginning of such year, together with a notice designating the method of payment of the annual assessments. In the event the Board determines monthly or quarterly installments are to be paid, on or before the first day of the first month (or third month if quarterly) and of each succeeding month (or third month if quarterly) of the year covered by the annual budget, each Owner shall pay, as his respective monthly assessment for the common expenses, one-twelfth (1/12) [or one-third (1/3) if quarterly] of his proportionate share of the expenses for such year as shown by the annual budget. Such proportionate share for each Owner shall be determined by the number of Residential Units eligible for assessment payments subject to any exemptions or reductions provided for in the Declaration. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new monthly or quarterly assessments for any year, or shall be delayed in doing so, each Owner shall continue to pay each month the amount of his respective monthly assessment as last determined, and shall be obligated to pay any difference owed as soon as the new assessments are determined. Each Owner shall pay his monthly or quarterly assessment on or before the first day of each applicable month to the Association or as may be otherwise directed by the Board.

Section 3. **Partial Year or Month.** For the first fiscal year and thereafter until the First Board is elected, the annual budget shall be approved by the Interim Board. If such first fiscal year, or any succeeding fiscal year, shall be less than a full year, then the monthly or quarterly assessments for each Owner shall be proportionate to the number of months and days in such period covered by such budget. Commencing with the date of delivery of a deed to a Residential Unit from Developer, each Owner shall pay his assessment for the following month or fraction of a month or following quarter or fraction of a quarter.

Section 4. **Annual Report.** Within ninety (90) days after the end of each fiscal year covered by an annual budget, or as soon thereafter as shall be practicable, the Board shall cause to be furnished to each Owner a statement for such year so ended, showing the receipts and expenditures and such other information as the Board may deem desirable.

Section 5. **Supplemental Budget.** In the event that during the course of any year, it shall appear to the Board that the monthly or quarterly assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated expenses for the remainder of such year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Owner, and thereupon a supplemental assessment shall be made to each Owner for his proportionate share of such supplemental budget.

Section 6. **Records and Statement of Account.** The Board shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures of the Association, specifying and itemizing the common expenses and limited common expenses incurred. Payment vouchers may be approved in such manner as the Board may determine.

ARTICLE V

Amendments

These Bylaws may be amended or modified from time to time by action or approval of the vote of a majority of the Owners casting votes as described in Article I, Section 7 hereof. Such amendments shall be recorded in the Office of the Register of Deeds for Davidson County, Tennessee.

EXHIBIT C

LEGAL DESCRIPTION BOOK 8026 PAGE 344
WHITWORTH OVERALL BOUNDARY

Being a tract of land in Nashville, Davidson County, Tennessee, said tract being a portion of the Whitworth planned unit development final plat as of record in Deed Book 6900, Pages 839, 840 and 841, R.O.D.C., and being more particularly described as follows:

Beginning at a concrete monument (old) located at the Southeast corner of the Elmington Condominiums as recorded in Deed Book 4660, Page 60, R.O.D.C.; thence, S78°10'11"W, 354.74 feet, to a point where the old existing right-of-way of Elmington formerly ended and the Westerly right-of-way of new Elmington begins;

Thence, with the said Westerly right-of-way line of new Elmington Avenue (same having a total right-of-way of 60.00 feet) and with a curve to the left having a radius of 740.00 feet, a deflection angle of 60°02'08", a tangent length of 427.55 feet, a chord length of 740.40 feet, a chord bearing of S38°31'48"E, for an arc distance of 775.39 feet, to a concrete monument (new);

Thence, continuing along said right-of-way line of Elmington Avenue, S68°32'52"E, 177.83 feet, to a concrete monument (new);

Thence, with a curve to the right having a radius of 1050.00 feet, a deflection angle of 25°08'57", a tangent length of 234.21 feet, a chord length of 457.19 feet, a chord bearing of S55°58'23"E, for an arc distance of 460.88 feet, to a concrete monument (new);

Thence, S43°23'55"E, 176.77 feet, to a concrete monument (new);

Thence, with a curve to the left having a radius of 740.00 feet, a deflection angle of 44°30'01", a tangent length of 302.74 feet, a chord length of 560.40 feet, a chord bearing of S65°38'56"E, for an arc distance of 574.74 feet, to a concrete monument (new);

Thence, S87°53'56"E, 10.44 feet, to a concrete monument (new);

Thence, leaving said Elmington Avenue right-of-way with a curve to the right having a radius of 25.00 feet, a deflection angle of 90°00'00", a tangent length of 25.00 feet, a chord length of 35.36 feet, a chord bearing of S42°53'55"E, for an arc distance of 39.27 feet, to a concrete monument (new), located at the new western right-of-way of Sharondale Avenue;

Thence, along said new Sharondale Avenue right-of-way S2°06'05"W, 705.88 feet, to a concrete monument (new), said monument being on the western right-of-way of Compton Road.

Thence, leaving said Sharondale Avenue right-of-way, S35°53'09"W, 331.13 feet, to a point;

Thence, continuing along said Compton Road right-of-way, S32°31'26"W, 823.41 feet, to a point, said point being the beginning of a curve to the right;

Thence, with a curve to the right having a radius of 25.01 feet, a deflection angle of 59°24'40", a tangent length of 14.27 feet, a chord of 24.78 feet, a chord bearing of S62°14'03"W, for an arc distance of 25.93 feet, to a point, said point being on the north right-of-way of Woodlawn Drive;

Thence, continuing along the right-of-way of Woodlawn Drive, N88°03'28"W, 44.95 feet, to a point;

Thence, N88°03'19"W, 491.64 feet, to a concrete monument (old);

Thence, N88°36'47"W, 366.15 feet, to a concrete monument (old);

Thence, leaving said right-of-way of Woodlawn Drive, N00°31'46"E, 336.88 feet, to an iron pin (old);

Thence, N00°32'19"E, 891.96 feet, to a corner stone (old);

Thence, N64°42'29"W, 1010.54 feet, to an iron pin (old);

Thence, S65°00'24"W, 48.22 feet, to an iron pin (old);

Thence, S30°56'33"W, 138.66 feet, to an iron pin (old);

Thence, S71°12'19"W, 31.18 feet, to a concrete monument (old), said monument located on the north right-of-way margin of Valley Vista Drive;

Thence, along said right-of-way N65°38'50"W, 77.20 feet, to a point on the east right-of-way of Bowling Avenue;

Thence, N01°17'20"E, 324.43 feet, to a concrete monument (old);

Thence, N03°56'21"E, 571.69 feet, to a concrete monument (old);

Thence, leaving said east right-of-way line of Bowling Avenue, S83°57'49"E, 544.54 feet, to a new iron pin;

Thence, N5°18'20"E, 476.32 feet, to a new iron pin;

Thence, N78°11'30"E, 178.16 feet, to a new railroad spike;

Thence, N6°13'51"W, 58.59 feet, to a new railroad spike;

Thence, N78°11'30"E, 200.00 feet, to a new railroad spike;

Thence, S6°13'51"E, 58.59 feet, to a new railroad spike;

Thence, N78°10'11"E, 30.18 feet, to the point of beginning, containing 98.44 acres, more or less.

9 6 6 1 1

IDENTIFICATION REFERENCE

JAN 16 2 37 PM '90

FELIX Z. WILSON II REGISTER
DAVIDSON COUNTY, TN

3559 21/15 1402 03CHECK 123.00