

THIS INSTRUMENT PREPARED BY:
CROLEY, DAVIDSON & HUIE PLLC
1500 First Tennessee Plaza
Knoxville, TN 37929
File No. 78359

STEVE HALL
REGISTER OF DEEDS
KNOX COUNTY

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
DUNCAN WOODS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Declaration") is made and entered into this ___ day of October, 2004, by S & E PROPERTIES, LLC, a Tennessee limited liability company (the "Developer");

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of any common facilities hereafter constructed therein; and, to this end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof, and

NOW, THEREFORE, the Developer declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Properties" shall mean and refer to all such existing properties as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II. hereof.
- (b) "Common Properties" shall mean and refer to those areas of land for the common use, benefit, and enjoyment of the owners of the Properties.
- (c) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.
- (d) "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.
- (e) "Owner" shall mean and refer to the owner, whether one or more persons or entities, of the fee simple legal title to any Lot situated upon the Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to a mortgagee or deed of trust beneficiary unless and until such mortgagee or beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (f) "Traditional Architecture" shall be defined as residential architecture categorized as a Williamsburg, Cape Cod, American Colonial, Georgian, French Provincial, English Tudor, and all other Traditional Single Family Residential Architecture common in the United States and not typically referred to as Contemporary.
- (g) "Subdivision" shall mean and refer to Duncan Woods as provided in Article II.


ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in Knox County, Tennessee, and is more particularly described as follows:

SITUATED in the Sixth Civil District of Knox County, Tennessee, without the corporate limits of the City of Knoxville, Tennessee, being land included in the subdivision known and designated as Duncan Woods, as shown on the map of the same recorded as Instrument No. 200410060029605, in the Register's Office for Knox County, Tennessee.

BEING a part of the same property conveyed to S & E Properties, LLC, by deed recorded as Instrument No. 200306110115084, in the Knox County Register's Office.


Instr: 200410260035111 Page: 1 OF 7
REC'D FOR REC 10/26/2004 3:29:18PM
RECORD FEE: \$37.00
M. TAX: \$0.00 T. TAX: \$0.00

**ARTICLE III
DURATION**

These covenants are to take effect immediately and shall be binding on all parties and all persons claiming under them until 1 January 2030 at which time said covenants shall be automatically extended for successive periods of ten years unless by vote of the majority of the then owners of lots it is agreed to change said covenants in whole or in part. Notwithstanding the foregoing, these covenants may be amended as provided in Article XX hereafter.

**ARTICLE IV
ENFORCEMENT**

If a Lot Owner shall violate or attempt to violate any of the covenants or restrictions herein, it shall be lawful for the Developer, any Owner or the Association, as hereinafter defined, to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions either to prevent him or them from so doing or to recover damages or other dues for such violation.

**ARTICLE V
SEVERABILITY**

Invalidation of any one of these covenants by judgment or court order shall not in any way affect any of the other provisions which shall remain in full force and effect.

**ARTICLE VI
LAND USE AND BUILDING TYPE**

All lots in the Subdivision shall be known and designated as residential lots unless otherwise noted.

No structures shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two stories in height and a private attached garage except by approval and sanction of the Duncan Woods Architectural Review Committee.

**ARTICLE VII
BUILDING LOCATION**

No building shall be located on any Lot nearer to any boundary line than setbacks as noted on the subdivision plat, or required by the Knox County Zoning Ordinance and/or subdivision regulations, which zoning ordinance and subdivision regulations shall be controlling and the appropriate County Zoning Authority shall have the exclusive authority to permit or deny variances in hardship cases as to the rear, side, or front setback requirements.

**ARTICLE VIII
DIVISION OF LOTS**

Not more than one single family dwelling may be erected on any one lot as shown on the recorded map and no lot shown on said map may be subdivided or reduced in size by any method such as voluntary alienation, partition, judicial sale, or other process of any kind except for the explicit purpose of increasing the size of another lot.

**ARTICLE IX
DUNCAN WOODS ARCHITECTURAL REVIEW COMMITTEE**

No building ("Structure") shall be erected, placed, altered, or permitted to remain on any building lot in the Subdivision until the building plans and specifications and a plan showing the location of a dwelling have been approved in writing by Duncan Woods Architectural Review Committee (the "Architectural Review Committee" and sometimes the "Committee") as to quality of workmanship and materials, harmony of exterior design (including paint colors), with existing structures and as to location with respect to topography and finish grade level and elevation. The Architectural Review Committee shall be composed of three members appointed by the Developer. A majority of the Committee may designate a representative to act for the Committee. In the event of death or resignation of any member of the Committee, the Developer shall have the exclusive authority to designate a successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. In the event the Committee or its designated representative fails to approve or disapprove such plans or specifications within twenty (20) days after the same have been submitted to it, such approval shall be implied and no longer required and this covenant will be deemed to have been fully complied with. Further, such plans must be left with the Architectural Review Committee during the period of construction after approval. Further, if no suit to enjoin the construction has been filed prior to completion thereof, approval will not be required and the covenant shall be deemed to be fully satisfied. The Developer or its successors or assigns shall continue to have the exclusive authority to appoint the Members of the Architectural Review Committee until such time as it shall in writing expressly confer such authority to the Association as provided in Paragraph XXIII.

Section 1. Purpose. Powers and Duties of the Architectural Review Committee. The purpose of the Architectural Review Committee is to assure that the installation, construction or alteration of any Structure on any Lot is submitted to the Architectural Review Committee for approval (i) is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the development of the Properties; and (ii) as to the location of the structures is consistent with surrounding structures with respect to topography, finished ground elevation. To the extent necessary to carry out such purpose, the Architectural Review Committee shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

Section 2. Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefore shall have been first submitted to and approved in writing by the Architectural Review Committee. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Architectural Review Committee, including, without being limited to:

- (a) a site plan showing the location of all proposed and existing Structures on the Lot, including building setbacks, open space, driveways, walkways and parking spaces including the number thereof;
- (b) floor plans;
- (c) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all back-filling and landscaping are completed;
- (d) specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors of all proposed Structures and alterations to existing Structures, and also showing front, side and rear elevations;
- (e) plans for landscaping and grading;
- (f) garage door design;
- (g) samples of building and paint materials to be used.
- (h) a comprehensive landscaping plan for each homesite must be designed by a registered Landscape Architect or person of similar competence and must be submitted to and approved by the Architectural Review Committee.
- (i) each property shall have at least six (6) shade trees of which no less than three (3) shall be located in the front and along the sides of the main dwelling structure. The type of tree shall be subject to the approval of the Architectural Review Committee and must have a minimum ten (10) feet of height and six (6) feet of spread. Shade trees shall not be planted in locations that would immediately or in the future create a nuisance, or screen the view of an adjoining lot.

Section 3. Approval of Builders. Any builder or landscaper, prior to performing any work on any Lot must first be approved by the Architectural Review Committee as to financial stability, building or landscaping experience and ability to build or landscape Structures or grounds of the class and type of those which are to be built on the Property. Such approval shall be within the sole discretion of the Architectural Review Committee. No person shall be approved as a builder or landscaper unless such person obtains his income primarily from construction or landscaping of the type which such builder or landscaper is to perform upon the Property. No Owner will be permitted to act as his own builder or contractor except where such Owner obtains his income primarily from the construction of the type of Structures to be constructed on the Property and otherwise meets the qualifications hereinabove set forth.

Section 4. Right of Inspection. The Architectural Review Committee, its agents and representatives, shall have the right during reasonable hours to enter upon and inspect any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and the Architectural Review Committee shall not be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection.

Section 5. Violations. (a) If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the Architectural Review Committee pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If, in the opinion of the Architectural Review Committee such violation shall have occurred, the Architectural Review Committee shall be entitled and empowered to enjoin or remove any such construction. Any costs and expenses incurred by the Architectural Review Committee in enjoining and/or removing any construction or improvements shall be added to and become a part of the assessment to which the Owner and his Lot are subject.

(b) The Architectural Review Committee shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within twenty (20) days after the mailing of the aforesaid notice of violation, then the Architectural Review Committee shall have the right of abatement. The Developer, upon being informed of such violation by the Architectural Review Committee, shall be entitled to seek equitable relief to enjoin such construction.

Section 6. All Builders and Homeowners shall be held responsible for the acts of their employees, sub-contractors, suppliers and other persons or parties involved in construction or alteration of a homesite. In this regard, a Builder or Homeowner shall be responsible for the' following:

- (a) Ensuring that the construction site is kept clean and free of debris and waste materials and that stockpiles of unused materials are kept in a neat and orderly fashion.
- (b) Ensuring that all Tennessee Department of Environment and Conservation guidelines are complied with in regard to silt and erosion control.
- (c) Prohibiting the consumption of alcoholic beverages, illegal drugs or other intoxicants that could hamper the safety or well-being of other personnel on the site or affect the quality of workmanship.
- (d) Assuring that the aforementioned are properly insured.

(e) Assuring that the aforementioned do not commit any violation of the rules and regulations of the Association.

(f) Ensuring that all driveways on the construction site are sufficiently graveled, a portable toilet is available and used by the construction workers and any mud or any debris caused by the construction are removed from the adjoining roadways as soon as reasonably possible. Further, silt fences shall be installed as required to keep silt, mud, and other debris off of the street.

Section 7. Nothing contained herein abrogates, modifies, or changes the applicability of any ordinances, statutes, codes, rules and regulations of Knox County or other governmental units as applicable and the necessity of obtaining a building permit, inspection or otherwise complying with applicable provisions of governmental codes, statutes, ordinances, rules and regulations.

Section 8. The existing structure on Lot 26 is exempted from the requirements of this Article IX and Article X, Section 1, Items 1, 2, 3, 4, 8 and 16; provided, however, if the present structure is removed or destroyed, the replacement thereof shall be subject to such requirements.

ARTICLE X DWELLING RESTRICTIONS

SECTION 1. DESIGN REQUIREMENTS.

No dwelling shall be erected, placed, altered or permitted to remain on any lot unless it conforms to the following requirements:

1. The dwelling and related improvements must be of Traditional Architecture and design as defined herein.
2. The minimum living area square footage requirements shall be determined by the Architectural Review Committee on a case by case basis and shall be within the sole discretion of the Committee.
3. All windows and the related trim must be of wood or vinyl construction as approved by the Architectural Review Committee.
4. All dwellings, except one story dwellings shall have a minimum roof pitch of 8/12. One story dwellings shall have a minimum roof pitch of 9/12.
5. All dwellings shall be of brick, stucco, stone or a combination thereof as approved by the Architectural Review Committee. Any other exterior finishes must be approved by the Architectural Review Committee on an individual house basis. No masonite will be permitted. Hardie Plank cement siding, or natural wood or premium vinyl soffit material will be considered on an individual house basis.
6. All above ground exterior foundation walls shall be veneered with brick, stone or stucco as approved by the Architectural Review Committee.
7. All fireplaces and chimneys shall have a brick, stucco, or stone exterior unless otherwise specifically approved on an individual basis by the Architectural Review Committee.
8. All dwellings shall have not less than a three car attached garage, side or rear entry only, capable of accommodating two automobiles unless otherwise approved by the Architectural Review Committee.
9. Heating and air conditioning systems shall be concealed from view by appropriate screening, subject to approval of the Architectural Review Committee.
10. There shall be no occupancy permitted of any dwelling until such time as the dwelling, yard and landscaping are complete except by approval of the Architectural Review Committee.
11. The finished grading for all lots shall be completed in conformity with the recorded plat for the Subdivision and in such manner as to retain all surface water drainage on said lot or lots in "property line swales" designed to direct the flow of all surface waters into the drainage easements as created by the overall drainage plan for the development, as approved by the municipal authority having jurisdiction over the Subdivision.
12. Finish building materials shall be applied consistently to all sides of the exteriors of buildings. Exterior materials shall be brick, stone or stucco as approved by the Architectural Review Committee. No simulated brick shall be permitted.
13. Finish colors shall be applied consistently to all sides of the buildings. Color selections shall be harmonious with each other and with natural materials, and shall be compatible with colors of the natural surroundings and other adjacent property.
14. Exterior window and door trim and similar decorations shall all be of the same color and materials, unless otherwise approved, and shall be either of the same material as exterior walls or directly compatible. Fascia, gutters and down spouts shall blend in and be directly compatible with the architectural detail of the exterior walls. Reflective glass is prohibited.

15. All exterior mechanical equipment including, but not limited to, transformers, vents, air conditioning compressors, pool pumps, meters, etc., shall be concealed from view by walls of the same material and color as the building or by an opaque landscaping screen. No solar energy devices shall be allowed.

16. Roofing materials must be 25 year architectural dimensional shingle with colors of weathered wood, slate blend, or charcoal gray.

17. All interior window treatments such as draperies and blinds shall have a solid light colored appearance from the exterior and are subject to approval by the Architectural Review Committee.

Section 2. MISCELLANEOUS RESTRICTIONS.

1. Mail boxes shall be of brick, stone or stucco with a light on top as approved by the Architectural Review Committee.

2. No outside radio transmission towers, receiving antennas, television antennas, satellite antennas or dishes or solar panels may be installed or used, except as approved by the Architectural Review Committee.

3. No one shall be permitted to store or park house trailers, campers, pleasure or fishing boats, trailers or other similar type vehicle on or about the Lots unless the same are stored or parked inside a garage so as not to be readily visible from the street or adjoining properties. No automobiles which are inoperable or being stored shall be repeatedly parked, kept, repaired or maintained on the street, driveway or lawn of any lot.

4. Builders will be responsible for providing silt control devices on each lot during construction.

5. Clotheslines and other devices or structures designed and customarily used for the drying or airing of clothes, blankets, bed linen, towels, rugs or any other type of household ware shall not be permitted and it shall be strictly prohibited for articles or items of any description or kind to be displayed on the yard or exterior of any dwelling for the purpose of drying, airing or curing of said items.

6. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the Architectural Review Committee of plans and specifications for such roads and driveways. Such specifications shall include the proposed substance to be used in constructing such roads and driveways, which substance shall be satisfactory to the Architectural Review Committee. Parking spaces, garages, and the driveway to a garage shall be planned and executed in an attractive and functional manner and shall consider the location of existing trees, topography, street scape and compatibility with surrounding improvements. All homesites shall have a paved driveway of stable and permanent construction of at least eighteen (18) feet in width. Unless prior approval is obtained by the Architectural Review Committee, all driveways must be constructed of brick, concrete or stone.

7. Any construction on a Lot shall be at the risk of the Owner of such Lot, and the Owner of such Lot shall be responsible for any damage to any curbing, sidewalks, or street resulting from construction on such Lot. Any damage to any section (s) of the sidewalk must be repaired by replacing completely all sections affected. Repairs of such damage must be made as soon as reasonably possible but in no event nor more than thirty (30) days after completion of such construction.

8. No cellular telephone tower or other communications tower will be permitted on any Lot.

**ARTICLE XI
NUISANCES**

No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

**ARTICLE XII
TEMPORARY STRUCTURES**

No trailer, basement, tent, shack, garage, barn or other outbuildings erected on the tract shall at any time be used as a residence temporarily or permanently nor shall at any time be used as a residence temporarily or permanently nor shall any structure of a temporary character be used as a residence.

**ARTICLE XIII
GENERAL PROVISIONS**

(a) The Association, the Architectural Review Committee, or any Owner, shall have the right to enforce, by and proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Architectural Review Committee or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.



(b) The Architectural Review Committee shall have the right of abatement in all cases where an Owner of a Lot shall fail to take reasonable steps to remedy a violation or breach of any restriction contained in this Declaration within twenty (20) days after the certified mailing of written notice of such violation or breach. The right of abatement means the right of the Architectural Review Committee, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation or breach exists, and to take such action or actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation or breach, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions. Further, the Architectural Review Committee, the Association, the Developer or any Owner may: (1) prosecute proceeding at law for the recovery of damages against those violating or attempting to violate the Declaration, and/or (2) maintain a proceeding in equity against those so violating or attempting to violate any covenants or restrictions for the purpose of preventing or enjoining all of any such violations or attempted violations, and/or have any such violation removed from the lot or cured.

(c) The remedies contained in this section shall be construed as cumulative of all other remedies now or hereafter provided by law. If the Association, the Architectural Review Committee, the Board or any other person or persons owning a lot shall successfully prosecute in law or equity an action pursuant to this or any other enforcement section of these covenants or restrictions, then that party shall be entitled to receive its reasonable attorney's fees and the costs reasonably necessary to prosecute the case against the party violating the covenants and restrictions herein.

ARTICLE XIV EASEMENTS

Easements and other restrictions in conformity with the recorded plat of Duncan Woods are expressly reserved for the overall development of the subdivision and no easements, rights of way or rights of access shall be deemed granted or given to any person or entity over, across, upon or through any lot in this subdivision unless prior written permission is granted by the Developer or its assigns.

ARTICLE XV COMMISSION OF WASTE AND UNSIGHTLINESS

At no time shall any lot or parcel be stripped of its top soil, trees, or allowed to go to waste or waste away by being neglected, excavated, or having refuse or trash thrown or dropped or dumped upon it. No lumber, brick, stone, cinder block, concrete block or other materials used for building purposes shall be stored upon any lot more than a reasonable time for the construction in which they are to be used to be completed. No person shall place on any lot in the Subdivision refuse, stumps, rock, concrete blocks, dirt or building materials or other undesirable materials. Any person doing so shall be subject to notification by the Developer or the Association to correct said condition within five (5) days of notification and if said condition is not corrected within said time period, the Developer or Association shall have the right to injunctive relief against the Owner of the affected lot and the Contractor or Agent of the Owner and to make all necessary corrections and the expense of same shall be a lien upon the real property affected.

ARTICLE XVI SIGNS

No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale, or signs used by the builder to advertise the property during the construction and sales period.

ARTICLE XVII LIVESTOCK AND POULTRY

No animals, livestock, poultry or fowl of any kind shall be raised, bred or kept on any lot except household pets such as dogs or cats which are permitted provided they are not kept, bred or maintained for any commercial purpose and do not create a nuisance and, provided further, however, in no event shall any household have more than two animals of any species. No fenced dog runs shall be allowed. The Architectural Review Committee shall have exclusive authority to further regulate the maintenance and care of said animals as it deems advisable.

ARTICLE XVIII GARBAGE AND REFUSE DISPOSAL

No lot shall be used or maintained as a dumping ground for trash or rubbish. Trash, garbage or other waste shall not be kept, except on a temporary basis and in sanitary covered containers.

ARTICLE XIX FENCES AND WALLS

No fences or walls or hedge rows shall be erected, placed or altered on any lot or parcel unless approved by the Architectural Review Committee.

ARTICLE XX



WAIVER AND MODIFICATION

(a) Developer hereby reserves the right in its absolute discretion at any time to annul, waive, change or modify any of the restrictions, conditions or covenants contained herein as to any part of Duncan Woods, subject to the Declaration, then owned by Developer and with the consent of the owner as to any other land in said subdivision, and shall have the further right before a sale to change the size of or locate or relocate any of the lots, parcels, streets, or roads shown on any of the plats of Duncan Woods.

(b) Developer, for itself and its assigns, specifically reserves the right to amend this Declaration to provide for the formation of a property owner's association (the "Association"), the powers, duties and governance thereof and to provide for the imposition of assessments to fund the operations of such Association which assessments may become a lien on the Lots subordinate only to the lien of any first mortgage securing an institutional lender and the lien for real estate taxes. By acceptance of a deed for a Lot, each Lot Owner agrees that such Owner shall become a member of such Association and shall be bound by the rules and regulations governing the same.

ARTICLE XXI
ASSIGNMENT OR TRANSFER

Any or all of the rights and powers, titles, easements and estates reserved or given to Developer in this Declaration may be assigned to any one or more corporations or assigns which will agree to assume said rights, powers, duties and obligations and carry out and perform the same. Any such assignment or transfer shall be made by appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing its acceptance of such rights and powers, and such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by Developer and Developer shall thereupon be released therefrom.

IN WITNESS WHEREOF the undersigned has caused this instrument to be executed the day and year first above written.

S & E PROPERTIES, LLC

BY: [Signature]

TITLE: Manager Member

STATE OF TN

COUNTY OF KNOX

PERSONALLY appeared before me, the undersigned authority, a Notary Public in and for said County and State, Eric Moseley, Sr., with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged self to be the Manager Member of S & E PROPERTIES, LLC, the within named bargainer, a limited liability company, that he as such being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by self as _____.

WITNESS my hand and official seal at office this 26th day of October, 2004.

Sheila Sage
Notary Public

My Commission Expires: 02-07-06

