

Prepared by and return to:

Michael E. Howley, Attorney
1755 Kirby Parkway, Suite 100
Memphis, TN 38119

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(C1286-00200)

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Richmond Road Partnership, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Shelby, State of Tennessee, which is more particularly described as follows:

Lots 1 through 127, inclusive, Sections A, B, C-1, E-1, and F-1, Phase I, Richwood Planned Development, as shown on plat of record in Plat Book 110, Page 42, Register's Office of Shelby County, Tennessee, reference to which plat is hereby made for a more particular description of said lot;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above and all lots in any future sections of said Richwood Planned Development as shown on Outline Plan of record in Plat Book 106, Page 7, in the Register's Office of Shelby County, Tennessee, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to THE RICHWOOD HOMEOWNERS ASSOCIATION, INC., its successors, and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple

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title to any Lot which is a part of the Properties, but excluding (1) the Declarant, (2) those having such interest merely as security for the performance of an obligation, and (3) those persons owning two or more Lots for the purpose of constructing residential dwellings thereon for resale; provided, however, those persons excluded by provision (3) of this Section will automatically become an Owner of that particular Lot within the meaning of this Article I, Section 2 on the happening of either of the following events, whichever occurs earlier:

(a) Record ownership of fee simple title to a Lot for a period of eighteen (18) months from the date of closing of the purchaser of said Lot.

(b) Commencement of construction of a residential dwelling on a Lot for personal occupancy.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Open Space" shall mean all real property owned by the Association and the easements granted thereto for the common use and enjoyment of the Owners. The Common Open Space shall be as shown in the recorded plat.

Section 5. "Lot" shall mean and refer to any plot of land shown on any recorded subdivision map of the Properties with the exception of the Common Open Space.

Section 6. "Declarant" shall mean and refer to Richmond Road Partnership, its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

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ARTICLE II
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Open Space and the easement granted therewith which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(A) The right of the Association to make rules and regulations for the use of all Common Open Space and facilities;

(B) The right of the Association to suspend the voting rights and right to use of the Common Open Space and facilities by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(C) The right of the Association to dedicate or transfer all or any part of the Common Open Space to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; No such dedication or transfer shall be effective unless an instrument is signed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. (a) Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Open Space and facilities to any member of his family who is living with him.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

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Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be Owners, as hereinbefore defined, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for any Lot in which ownership is held by more than one person shall be cast as determined by all of the persons having an ownership interest in said Lot. In no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or
- (b) When the Declarant determines it to be in the best interest of the Association to cease Class B membership and elects to terminate said Class B membership.

ARTICLE IV.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected from time to time as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the property against which each

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such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fee is due. The obligation for delinquent assessments shall pass to his successors in title unless expressly waived by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvements and maintenance of the Common Open Space.

Section 3. Annual Assessment. Until December 31, 1987, the maximum assessment shall be \$5.00 per Lot per month. Until December 31, 1988, the Declarant shall have the sole authority to establish the amount of the monthly assessment.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Open Space, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice & Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called

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subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting.

Section 6. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for each Lot owned by an Owner.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on the first day of the month following the closing of the purchase of the Lot by the Owner.

The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a letter signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such letter shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Power of Sale. For the purpose of enforcing the lien of any unpaid and delinquent irrevocable assessment, each Lot Owner grants the Board of Directors irrevocably and for a period of time ending on January 1, 2017, subject to an automatic extension for successive periods of ten (10) years unless by vote of the majority of the then Owners it is agreed to change said power of sale, the power to sell his Lot and any improvements thereon at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale is made subordinate to any recorded mortgage or deed of trust upon the unit (the Board of Directors is authorized to elect to enforce any lien by action in court where priority is asserted over a prior recorded mortgage or deed of trust or to enforce the lien by public sale where no priority is sought over the lien of a prior recorded

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mortgage or deed of trust). Any such sale shall be made after first advertising the sale of said property by not less than three (3) weekly publications in some newspaper in Memphis, Tennessee, giving notice of the time and place of such sale. Any sale of a Lot and any improvements thereon to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption, statutory right of redemption, homestead and dower, and all other exemptions, all of which are expressly waived by the Lot Owners; and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot and any improvements thereon, except real estate and ad valorem taxes assessed against the Lot and any improvements thereon. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the Property and the expenses of litigation, attorneys' fees, and sales commission; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages; and third, to the payment of all amounts due the Board of Directors and the other co-owners under the terms of the Declaration of Covenants, Conditions and Restrictions, and By-Laws; and the balance, if any, to the Owner whose Lot and any improvements thereon are sold and his assigns.

Section 9. Additional Default. Any recorded first mortgage secured on a Lot and improvements thereon shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to these covenants, conditions and restrictions, or any installment thereof, shall likewise be a default in such mortgage, but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such mortgage by reason of Section 10 shall not be diminished by reason of such failure.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate

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to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All properties dedicated to and accepted by a local public authority, the Common Open Space, all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Tennessee, and Lot 94, Section A shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments. However, the owners of Lot 94, Section A shall have no right to use the Common Open Space or amenities and shall not be members of the Association.

Section 12. Management Agreements. The Board of Directors shall be authorized to employ for the Association a management agent at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize including, but not necessarily limited to, the duties set out in Article VII, subsection (e) of the By-Laws.

It shall be the duty of the Board of Directors of the Association to effect a new management agreement prior to the expiration of any management contract. Any or all management agreements shall be with a responsible party or parties having experience adequate for the management of a project of this type.

Section 13. Insurance. (a) The Board of Directors shall maintain casualty or physical damage insurance on all buildings and improvements owned by the Association in an amount of not less than one hundred percent (100%) of full value. The said

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Board shall also carry public liability insurance, workman's compensation insurance, and any and all other forms of insurance and in any amounts as may be deemed appropriate by the Board of Directors.

All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association and its Board of Directors.

(b) All policies shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to any and all insureds named thereon.

ARTICLE V

PROTECTIVE COVENANTS

Section 1. All Lots in Phase I of Richwood shall be known and described as residential lots. No structure shall be erected on any Lot other than one single family residence, a garage or carport, and not more than one detached outbuilding. This restriction shall not apply to non-commercial greenhouses or gazebos. The detached outbuildings located on Lot 94 as of July 9, 1986 shall not be affected by these restrictions.

Section 2. Building setback lines shall be left to the discretion of the Memphis and Shelby County Office of Construction Codes Enforcement and the interpretation of the Memphis and Shelby Zoning Ordinance.

Section 3. The minimum ground floor heated area of the main building exclusive of open porches, carports, and garages shall be not less than 2000 square feet in the case of a one-story residence and not less than 1000 square feet in the case of a one-and-one-half or two-story residence, however, the total heated floor area of a one-and-one-half or two-story residence shall be not less than 2200 square feet.

Section 4. No building shall be erected on any Lot until the design and plot plan thereof have been approved in writing by Richmond Road Partnership or a committee appointed by

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Richmond Road Partnership; however, in the event that Richmond Road Partnership or such committee appointed by Richmond Road Partnership fails to approve or disapprove such design and plot plan within fifteen (15) days after submission of the plan and specifications to them, then such approval shall not be required.

Section 5. No permanent structure shall be moved onto any Lot unless it shall conform to and be in harmony with similar structures in this subdivision and no structure of a temporary character such as a trailer, garage, shed, or other outbuilding shall be used on any Lot at any time as the residence either temporarily or permanently. No structure of any kind, including but not limited to a television antenna, radio antenna, etc. can be erected which extends more than ten feet above the highest point of the roof of the house and such structures shall not be erected on the street side of a residence. Any installation of a T.V. satellite dish shall be approved in writing by the Declarant or Association.

Section 6. 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.

Section 7. No recreational vehicle, boat, tractor, or any type of trailer may be parked or stored on any Lot unless same is under a carport or in a garage or suitably screened from view by adequate landscaping; all passenger automobiles shall be parked either on the driveway or in the garage or carport. No truck tractor or trailer may be parked on any Lot or in the street in front of any Lot.

Section 8. No motor vehicle or any other vehicle, including but not limited to, a boat, motor, and boat trailer, lawn mower, tractor, etc. may be stored on any Lot for the purpose of repair of same; no A-frame or motor mount may be placed on any Lot nor shall any disabled or inoperable vehicle be stored on any Lot.

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Section 9. Any special landscape screens including earthen berms or embankments, fencing, entryways, and plant material shall remain in place and may not be removed.

Section 10. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of forty (40) years from the date these covenants are recorded, after which time said covenants shall expire unless an instrument signed by a majority of the then Owners of the Lots has been recorded agreeing to extend said covenants in whole, in part, or as modified. Richmond Road Partnership reserves the right to impose additional or separate restrictions at the time of sale of any of the Lots sold in this subdivision, which restrictions may not be uniform but may differ as to different plots, and further reserves the right to amend these restrictions without the approval of the Owners of the Lots within the subdivision until a majority of Lots have been sold.

Section 11. If the parties hereto or any of them or their heirs or assigns shall violate any of the limitations and restrictions herein, it shall be lawful for any other person or persons owning any other Lot in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such limitations or restrictions and either to prevent him or them from so doing or to recover damages for such violation.

Section 12. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 13. Lots in Richwood shall be subject to any declarations, covenants and restrictions enacted by The Richwood Homeowners Association and any other declarations, covenants and restrictions hereinafter executed in writing and filed in the office of the Register of Shelby County, Tennessee.

Section 14. Access to Lot 54 shall be from Wilsford Cove only. On Lot 54 the building setback shall be a minimum of 50

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feet from the right-of-way of Old Forest Road. Any fence constructed on Lot 54 or Lot 55 shall be located no closer to the right-of-way of Old Forest Road than the principal structure.

ARTICLE VI

RIGHT TO EXPAND

The right is reserved to Declarant, without the necessity of approval or permission from any party, to expand the Properties in one or more increments, to a total not to exceed 581 Lots, provided the expansion shall be within the areas shown on the Outline Plan for Richwood P.U.D. recorded in Plat Book 106, Page 7 in the Register's Office of Shelby County, Tennessee. The size of such additional lots and the size, style and other characteristics of the improvements located on such additional lots, may not be the same as the original 127 Lots and improvements thereon.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 1. Gender and Grammar. The singular whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men and woman, shall in all cases be assumed as though in each case full.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 28th day of January, 1987.

RICHMOND ROAD PARTNERSHIP

BY: Faxon, Inc.

BY: R.M. Robbins
R.M. Robbins, President

BY: Patton & Taylor Enterprises, Inc.

BY: Clyde Patton Jr.
Clyde Patton, Jr. President

STATE OF TENNESSEE:
COUNTY OF SHELBY :

Before me, a duly qualified Notary Public, in and for said State and County, personally appeared Wesley Hays and Clyde Patton, Jr., with whom I am personally acquainted, and who upon their several oaths acknowledged that Faxon, Inc. and Patton & Taylor Enterprises, Inc., both Tennessee corporations, are all of the partners doing business as and in the name of Richmond Road Partnership, a partnership, the within named bargainor, and that Wesley Hays is the President of Faxon, Inc. and Clyde Patton, Jr. is the President of Patton & Taylor Enterprises, Inc., and that they, as the Presidents of the respective corporations, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by subscribing thereto the names of the respective corporations by themselves, respectively, as the Presidents of said corporations; all as the free act and deed of Richmond Road Partnership.

WITNESS my hand and Official Seal at Office this 28th day of January, 1987.

Wesley Hays
Notary Public

My commission expires:
3-14-88

211656

STATE TAX _____
REGISTER'S FEE _____
RECORDING FEE 39.00

JAN 28 2 58 PM '87

STATE OF TENNESSEE
SHELBY COUNTY
Wesley Hays
REGISTER

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