

*Ken Holbert*

ADDRESS

**DECLARATION OF COVENANTS AND RESTRICTIONS  
CASCADE FALLS SUBDIVISION  
UNIT 1**

This Declaration of Covenants and Restrictions is made as of the \_\_\_\_ day of July, 2004, by Cascade Falls, LLC, Terry Patton, managing member, hereinafter referred to as the "Developer."

**WITNESSETH:**

**STEVE HALL  
REGISTER OF DEEDS  
KNOX COUNTY**

Whereas, the undersigned, Cascade Falls, LLC, Terry Patton, managing member (hereinafter referred to as "developer") is the owner and developer of a tract of land in the Sixth District of Knox County, Tennessee and without the corporate limits of the City of Knoxville, Tennessee, and being know and designated as Cascade Falls Subdivision, UNIT 1, and being more particularly described on Exhibit A attached hereto and incorporated herein by reference and as shown on the map of same of record in the Register's Office for Knox County, Tennessee, Cabinet \_\_\_\_\_ Slide \_\_\_\_\_ ("Subdivision") and  
*Instr # 200407270008315*

Whereas, the Developer of the Subdivision desires that certain restrictive covenants be declared and recorded, which covenants shall run with the land of the Subdivision and be binding on the present owner and all subsequent owners of any lot or lots in the Subdivision.

Now, Therefore, in consideration of the premises and the mutual benefits to be derived by all parties concerned, the Developer does hereby covenant and agree with all subsequent owners of lots in the Subdivision that the following restrictive covenants shall be covenants running with the land of the Subdivision and shall be binding upon the Developer and all subsequent owners of lots in the Subdivision and shall inure to the benefit of all owners of any of said lots in the Subdivision:

**TERM, ENFORCEMENT, AND SEVERABILITY**

1. These covenants are to take effect immediately and shall be binding on the Developer and all persons claiming under the Developer until July 1, 2024 at which time said covenants shall be automatically extended for successive periods of ten (10) years each unless, by a vote of the majority of the then



owners of the lots, it is agreed to change said covenants in whole or in part. Each owner shall be entitled to one vote for each lot which he owns.

2. If the parties hereto or any of them, or their heirs, successors or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real estate situated in the Subdivision to prosecute any proceedings at law or in equity against the person or persons either to prevent him or them from so doing and/or to recover damages and/or other dues for such violation.
3. Invalidation of any one of these covenants by judgement or court order shall not in any way affect any of the other provisions which shall remain in full force and effect.

#### **BUILDING LOCATION**

4. No building shall be located nearer than 25 feet from the front lot line, nearer than and 10 feet to any interior side lot line, and nearer than 35 feet to the rear and/or peripheral lot line. For the purpose of this covenant, eaves, steps and open stoops shall not be considered as a part of the building; provided, however, this shall not be construed to permit any part of the building to encroach upon another lot. Roofed porches shall be considered as a part of the building and shall be subject to the aforesaid setback restrictions. The Developer reserves the right at all times with respect to all lots to grant express and written consent and waiver of building set back lines to allow houses to be adapted to the terrain in the subdivision, however, set back line restrictions must meet the Knox County Planned Residential Zoning requirements on all houses.

#### **DIVISION OF LOTS**

5. Not more than one dwelling house 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 device, voluntary alienation, partition, judicial sale or other process of any kind except for the purpose of increasing the size of another lot.

## **DWELLING SIZE AND OTHER RESTRICTIONS**

6. Each dwelling shall be required to meet certain minimum square footage and design requirements and no dwelling violating these minimum requirements shall be erected, placed, altered or permitted to remain on any lot in the Subdivision. These requirements are as follows:
  - 6.1 Houses with one and one-half stories up to two stories shall contain at least 2,400 square feet of living space total, excluding garages, porches, decks and terraces.
  - 6.2 Houses with one floor or one floor and a basement shall contain a minimum of 2,000 square feet on the uppermost level, excluding garages, porches, decks and terraces.
  - 6.3 No dwellings shall be permitted with a split foyer design; and multi-level houses will be considered on a case by case basis only and must receive the prior written approval of the Developer.
  - 6.4 No dwelling shall be permitted to exceed two and one-half stories in height. All dwellings shall have a minimum roof pitch of 8/12 and there shall be at least one roof level change in all dwellings.
  - 6.5 All houses must have, as a minimum, a two car attached garage that will accommodate at least two large sized automobiles. The Developer shall have the authority to allow the two car garage in a basement house to be located in the basement if, in the Developer's sole opinion, the house is large enough in its exterior appearance and its appearance does not adversely affect the aesthetics of the house and the Subdivision as a whole.
  - 6.6 Construction of a house on all lots purchased shall commence no later than 2 years from date of lot purchase.
  - 6.7 Lots 62 and 63 are restricted to rancher only plans.
  - 6.8 All plans shall be submitted to the Developer for approval and such approval shall include color selection of all exteriors inclusive of, but not limited to roof, siding, brick, stone and (EIFS) synthetic stucco and all accent colors.
7. No radio or television aerial, antenna or satellite dish or any other exterior or electronic or electric equipment or devices of any kind shall be installed on the exterior of any structure, that is visible from the street, located on a building lot



or on any portion of any building or other structure unless approved in writing by the Developer or by the Homeowners' Association. As a guide for approval, such fixtures shall not exceed 24 inches in diameter.

8. Mailbox holders shall be of metal construction and shall be the brand named Imperial Mailbox with Post type #3, Box type #1, Paper Holder type #6, and number plate #1. Lighting post lamps may be installed with the prior written approval of the Developer. Standards for such lamps shall be established by the Developer.
9. No one shall be permitted to store or park house trailers, campers, recreation vehicles, frequently referred to as "RV's", pleasure or fishing boats, trailers or similar vehicles on or about said residences 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. No commercial or construction equipment of any kind shall be parked in streets of the Subdivision overnight.
10. No noxious or offensive trade or activity shall be carried upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.
11. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on the tract at any time shall be used as residence temporarily or permanently nor shall any structure of a temporary character be used as a residence. Storage sheds during construction are not permitted.
12. No chain link fences are permitted. Only wood fences are permitted. No fence shall be erected beyond the rear corner of the house. No fence is permitted on corner lots where the fence would be running parallel with Cascade Falls Lane. Location and style of fencing must be approved in writing by the Developer prior to installation, including dog runs and/or enclosed pet areas. A chain link fence may be permitted bordering the quarry only, but subject to written approval of the Developer.

13. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the map of record. No easements, rights of way or rights of access shall be deeded, granted or in any way given to any person or companies through any lot in this subdivision unless permission is given in writing by the Developer.
14. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet may be used by the Developer to advertise the property during the period of lot sales by the Developer. Developer reserves the right to display signs of a larger size for promotion of the development. This section does not prohibit the posting of signs advertising the sale of lots and houses by owners utilizing practices that are customary for residential sales.
15. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats, and other household pets may be kept provided they are not kept, bred or maintained for commercial purposes and are not a nuisance to the Subdivision.
16. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage of such materials shall be kept in a clean and sanitary condition and shall be screened.
17. All front elevations must be brick, stone, or (EIFS) synthetic stucco. The exterior of all foundation walls must be brick, stone, or (EIFS) synthetic stucco. All other above ground exterior walls (sides and rear) may have vinyl siding or hardiboard unless obtaining prior written approval of the Developer.
18. No outbuilding such as pool houses, carports, or detached garages shall be built unless approved by the Developer. Any such outbuildings shall be in substantial conformity with architectural design used for the main dwelling.
19. No house or building, fencing, wall, utility yard, driveway, swimming pool or other structure or improvement, regardless of size or purpose, shall be commenced, placed erected or allowed to remain on any building lot, nor shall

any addition to or exterior change or alteration thereto be made, unless and until building plans and specifications covering the same and showing the nature, kind, shape, height, size, materials, floor plans, exterior color schemes with paint samples, location and orientation on the building lot and approximate square footage, construction schedule, on-site sewage and water facilities, and such other information as the Developer shall require, including if so required, plans for the grading and landscaping of the building lot showing any changes proposed to be made in the elevation of surface contours of the land shall have first been submitted to and approved in writing by the Developer and until a copy of all such plans and specifications as finally approved by the Developer have been lodged permanently with the Developer. The Developer shall have the absolute and exclusive right to refuse to approve any such building plans and specifications and lot grading and landscaping plans which are not suitable or desirable in Developer's opinion for any reason, including, purely aesthetic reasons and reasons connected with future development plans for the owners of said land or contiguous lands. In passing upon such building plans and specifications and lot grading and landscaping plans, the Developer may take into consideration the suitability and/or desirability of the proposed construction and the quality of the proposed workmanship and materials and the harmony of external design with the surrounding neighborhood and existing structures therein and the effect and appearance of such constructions as viewed from neighboring properties. No pre-existing structure, building house or residence shall be moved into the Subdivision in whole or in part regardless of structure size. This restriction is not intended to exclude prefabricated or packaged housing which shall be allowed to be constructed within the Subdivision as long as it conforms with all other requirements as set forth herein and approved by Developer. Further, this restriction is not intended to apply to a sales center or club house.

20. It shall be required that each individual who constructs a house on a particular lot shall install proper drainage swells on all lot lines to direct the flow of all surface waters into the drainage easement. It shall be the responsibility of each builder to maintain a clean and neat construction site at all times and to clean the street in front of his lot during the construction period and after completion of the house. On all lots which border drainage swells containing vegetation, trees, shrubs, grass, etc., the builders and all future owners shall not be permitted to remove such vegetation from these areas.

21. No house constructed on any Lot in the Subdivision may be occupied prior to its completion, which shall include landscaping, all of which shall be consistent and in keeping with surrounding neighborhood.

**COMMON AREA AND HOMEOWNERS ASSOCIATION**

22. **Title to Common Area.** The Developer shall retain the legal title to the Common Area shown on the map of the Subdivision until such time as the Developer, in the sole and exclusive discretion of the Developer, shall convey same to a Homeowners Association for the Subdivision. Furthermore, the Developer declares that Developer did construct, provide, maintain and is responsible for certain amenities on common areas, namely: entrance sign, lighting, watering systems, plantings, and landscaping. The Developer will continue with this responsibility only until the majority of the lots have been sold. If the property owners desire to continue these functions, facilities and amenities, it will be necessary for them to form a Homeowner's Association ("Association"). The Developer may convey these common areas to the Association and transfer to the Association, upon proper arrangements, the accompanying facilities and equipment. The timing of this conveyance and transfer shall remain with the sole discretion of the Developer. In the event an Association is not timely organized, the Developer shall at his sole discretion, determine when he will no longer take any responsibility, financial or otherwise, for these matters. In furtherance of this decision, the Developer can elect to form and establish a Tennessee not-for-profit corporation to hold title to the Common Area for the benefit of the owners of lots in the Subdivision and appoint the owners as members of the not-for profit corporation which shall be named the Cascade Falls Subdivision Homeowners Association("Association").

If the Developer elects to form and establish the Association, then the Developer will provide a form of Bylaws for adoption by the Board of Directors of the Association. In such event the Developer will serve as the sole board member of the Association until a Board of Directors is appointed by the Developer or is duly elected in accordance with the Bylaws of the Association.

23. **Extent of Members' Easements.** The rights and easements of enjoyment in and to the Common Area created hereby shall be subject to the following:

23.1 Any rules and regulations reasonably adopted by the Association;

23.2 The right of the Association to take reasonable action to protect and preserve the rights of the Association and the individual members in and to the Common Area;

23.3 The right of the Association, as provided in its Charter of Incorporation and bylaws, to suspend the enjoyment rights of a member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of rules and regulations reasonably adopted by the Association;

23.4 The right of the Association to dedicate or transfer all or any part of the Common Area or areas to any public agency, authority, utility, municipality or other governmental entity for any reasonable purposes or the right of the Association to mortgage or convey the Common Area, and subject to such conditions as may be agreed upon by the Board of Directors of said Association; provided, however, no such dedication or transfer, and the conditions and provisions incident thereto, shall be effective unless approved by at least two-thirds of the members of the Association; and

23.5 The rights of members of the Association shall not be altered or restricted because of the location of the Common Area in a phase or portion of the Subdivision in which such member is not a resident. Notwithstanding the phase or portion of the Subdivision in which the Lot is located, the owners of such lots shall be entitled to full use and enjoyment of all Common Areas as provided herein.

24. **Parking Rights.** The Developer shall have the absolute authority to determine the manner of parking within the Subdivision and the manner in which vehicles may be parked on any lot. At such time as the Association obtains authority over the Common Area wherein said parking is situated, it shall have the absolute authority to regulate the maintenance and use of the same.

25. **Recreation Areas.** Any play ground or other recreation or play areas or equipment furnished by the Developer (collectively, the "Recreation Equipment") on the Common Area or otherwise within or adjacent to the Subdivision, shall be used at the sole risk of the user. Neither the Developer, the Association, nor any of their officers, directors, members, shareholders, agents or employees thereof, shall be liable to any person or entity for any



claim, damages, liability or injury relating to or arising out of the use of the Recreation Equipment. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to have released any and all claims of any kind, type or nature relating to or arising out of the use of the Recreation Equipment. The use of the Recreation Equipment is subject to rules and regulations established from time to time by the Association, including, without limitations, rules addressing hours of use, appropriate dress and other matters. The Recreation Equipment, generally, is intended for family use and all users of the Recreation Equipment shall at all times dress and conduct themselves in a manner consistent with the presence of families and young children.

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

#### **26. Creation of the Lien and Personal Obligation of Assessments.**

The Developer hereby covenants and each owner of any lot in the Subdivision, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association: (1) annual assessments or charges determined in accordance with these Declarations; and (2) special assessments for capital improvements. All such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the lot against which each assessment is made. Upon default in the payment of such assessments, the Association is authorized and entitled to record a notice of lien claim in the Register's Office for Knox County, Tennessee, and to foreclose that lien claim by attachment and sale of the property through appropriate legal proceedings. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation, jointly and severally, of the person who was the owner of such property at the time when the assessment fell due. The Association may bring an action in court to recover such assessment, together with interest, costs and reasonable attorney fees, from each person who was an owner of such lot at the time when the assessment fell due, which action may be brought in lieu of or in addition to the filing or foreclosure of the lien pursuant hereto. The personal obligation for the

delinquent assessments shall not pass to the owner's successors in title unless expressly assumed by them. If an Assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate of ten percent (10%) per annum.

27. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety, welfare and beautification of the Subdivision and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and of the homes situated in the Subdivision, and administrative costs related thereto. Such used shall include, without limitation, the payment of taxes and insurance thereon and repair, replacement, and addition thereto, and for the cost of utilities, labor, equipment, materials, management and supervision thereof, including all such costs relating to or arising out of the Recreation Equipment. The assessments shall not be specifically limited to the Common Area, but shall extend to and include the right to maintain and repair the streets and accessways and the lighting, traffic signals and signs pertaining to the Subdivision, and any common easements and driveways. The costs of operation and maintenance of street lights and lighting regardless of the location within the Subdivision and the proximity to the individual lots shall be borne equally and prorated as to each lot without regard of the ownership; it being the intent of this requirement to insure the safety, enjoyment and security of the entire Subdivision.

28. **Annual Assessment.** The Developer shall have the right to determine and set the annual assessment each year for a period of two (2) years from and after the establishment of the Association. The assessment shall be a sum reasonably necessary as deemed by the Developer to defray the expenses of the Association for such year and to otherwise satisfy the provisions of Section 27. From and after the expiration of the first year, the assessment may be adjusted upward or downward as herein provided. *Until July 1, 2006, the maximum annual assessment shall be \$480.00 per lot.*

29. **Special Assessments for Capital Improvements.** In addition to the annual assessments authorized by Section 28 hereof, the Association may levy in any year a special assessment for the purpose of defraying in whole or in part the

cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, and any other matter as determined by the Association provided that any such assessment shall have the assent of at least fifty-one percent (51%) of the members of the Association present at a duly called meeting of the members of the Association for the purpose of making the assessment.

30. **Change in Basis and Maximum of Annual Assessments.** The Association may change the maximum annual assessment and basis of the assessment fixed by Section 28 hereof prospectively for any period provided that any such change shall have the assent of at least fifty-one percent (51%) of the members of the Association present at a duly called meeting of the members of the Association for the purpose of making the change.

31. **Quorum for any Action Authorized Under Sections 29 and 30.** The quorum required for any action authorized by Sections 29 and 30 hereof shall be as follows:

*At the first meeting called for the purpose of levying or changing assessments as provided for in Sections 29 and 30 hereof, the presence at the meeting of members of the Association in person or by proxy entitled to cast fifty-one (51%) percent of all the votes of the membership shall constitute a quorum.*

*If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 32 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.*

32. **Commencement of Annual Assessments.** The first annual assessment shall become due and payable on the first day of the month following the lapse of thirty (30) days from the date of the sale of the first lot in the Subdivision. Thereafter, as each person or entity becomes a member of the Association by virtue of being a lot owner in the Subdivision, such owner's assessment for the current year shall be a pro-rata part of the annual assessment and shall be due on the first day of the month following the date such owner becomes a member



of the Association. Such owner shall not be entitled to any refund of his annual assessment. Each building contractor shall have a \_\_\_\_ month exemption from assessment for each lot commencing from the date the contractor has purchased the lot or lots in the Subdivision.

33. **Due Date of Special Assessments.** The due date of any special assessment under Section 29 hereof shall be fixed in the resolution approved by the members of the Association authorizing such assessment.

34. **Notification of Assessments.** It shall be the duty of the Board of Directors of the Association to notify each owner of any change in the annual assessment or

notify each owner of any change in the annual assessment or any special assessment and the due date of such assessment. The requirement of notice shall be satisfied if such notice is given by regular deposit in the United States Mail to the last known address of each such owner.

35. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or mortgages now or hereafter placed upon the Subdivision and the lots thereof by the Developer or any owner, except, such subordination shall not apply to the assessments which have become due and payable prior to a sale or transfer of a lot resulting in a subsequent mortgage.

36. **Exempt Property.** The following property to the extent it is subject to this Declaration, shall be exempted from the assessments, charges and liens created herein:

- 36.1 All properties to the extent of any easement or other interest therein dedicated and accepted by the local authority and devoted to public use;
- 36.2 All Common Area as defined in Article 1, Section 1 hereof;
- 36.3 All properties exempt from taxation by laws of the State of Tennessee or United States Government upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.



37. **Assessment on Lots Owned by Developer.** The amount of the annual or special assessments on any lots owned by the Developer shall be waived.

38. **Books and Records.** The books and records of the Association shall be kept in such a manner that is possible to determine and ascertain that (i) all revenue from assessments is expended by the Association for development, improvements, maintenance and upkeep of all Common Area of the Association, and (ii) such sums are expended for the purposes set forth herein.

### **AMENDMENTS**

39. The Developer shall have the right to amend these covenants and restrictions, but all such amendments shall conform to the general purposes and standards of the covenants and restrictions herein contained. The right to amend shall include the right to:

39.1 amend these covenants and restrictions for the purpose of curing any ambiguity or any inconsistency between the provisions contained herein;  
and

39.2 release any lot from any part of the covenants and restrictions if the Developer in Developer's sole judgement determines that such release is reasonable and does not substantially affect any other building lot in any adverse manner.

40. These covenants and restrictions may also be amended by an instrument signed by three-fourths (3/4) of the owners of lots in the Subdivision. For the purpose of this section, Subdivision shall include all phases or units of the Subdivision.

41. Any amendment to these covenants and restrictions must be recorded in the Register of Deeds Office for Knox County, Tennessee.

### **NOTICES OF MEETINGS AND QUORUM.**

42. Notice shall be given to all owners of meetings of owners, stating the date, time, and place (and purpose, in the case of special meetings) for which the

meeting is called. Such notice shall be in writing and shall be mailed or delivered to each owner at his or her home address not less than ten (10) days nor more than two (2) months before the meeting. Proof of such mailing or delivery may be given by the written statement of the Secretary or other person giving the notice. Notice of a meeting may be waived before, at, or after the meeting.

A quorum at any meeting of the Association shall consist of persons entitled to cast at least fifty percent (50%) of the votes entitled to be cast on a matter unless otherwise provided herein. The affirmative vote of a majority of the votes cast, being more than fifty percent (50%) of the total number of votes cast, is required to adopt any resolution, elect any director, make any decision or take any action.

**IN WITNESS WHEREOF, the undersigned, being the Developer/Declarant herein, as owner of the real estate herein described has caused this Declaration of Covenants and Restrictions to be executed as of the day, month, and year first above written.**

**CASCADE FALLS, LLC**

By: Terry Patton Managing Member  
Terry Patton, Managing Member

STATE OF TENNESSEE     )  
  )  
COUNTY OF KNOX         )

Before me, the undersigned Notary Public, of the State and County aforesaid, personally appeared TERRY PATTON, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, who, upon oath, acknowledged himself to be the Managing Member of CASCADE FALLS, LLC, the within named bargainor, a corporation, and that he as such Managing Member, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing his name as Managing Member.

Sworn to and subscribed before me this the 27 day of July, 2004.

*Mary B. Coyle*  
NOTARY PUBLIC



My Commission Expires: December 4, 2006

