

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE WINDMILL P.D.

THIS DECLARATION is made, published and declared this 12 day of April, 2004, by The Windmill P.D., developed by Trimark LLC, a Tennessee limited liability company, (the “Declarant” or “Developer”) and any and all persons, firms or corporations hereinafter acquiring any of the within described property:

WHEREAS, the Declarant is the fee simple owner of a certain tract of real property in Shelby County, Tennessee, which property is more particularly described in Exhibit “A” attached hereto (the “Property”); and

WHEREAS, the Developer has caused to be prepared a plan for the development of the Property, to be known as “The Windmill Planned Development” into residential parcels, together with certain common areas for the use, benefit and enjoyment of the owners of the parcels in common with each other; and

WHEREAS, the Developer has designed The Windmill P.D. as a private development designed to create a wooded atmosphere with no sidewalks. The parcels are estate-sized lots with storm drainage carried into the sewer. The Seller makes no warranty concerning the degree of rainwater inundation that may result on the aforementioned parcels since said inundation can be expected with rainfall, which exceeds the normal standards. The private road may vary in width to preserve trees and the natural character.

WHEREAS, the Developer has caused a plat of the Property to be prepared and is attached hereto as Exhibit “B” (the “Plat”); and

WHEREAS, it is to the benefit, interest and advantage of the Declarant, the Parcel Owners, and of each and every person of other entity hereafter acquiring any interest in the Property that certain covenants, restrictions, easements, assessments and liens governing and regulating the use and occupancy of the same be established, fixed, set forth and declared as covenants running with the land;

NOW, THEREFORE, in consideration of the premises, the Declarant does hereby declare that the recitals stated above are incorporated herein as though stated verbatim and does hereby publish and declare that all or any portion of the Property described in Exhibit “A” is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations (and subject to all easements, conditions, restrictions, etc., as set out in the Plat, Exhibit “B”), all of which are declared and agreed

to be in furtherance of a plan for the development and improvement of the said Property, and the said covenants, conditions, restrictions, uses, limitations, and obligations shall run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any person or legal entity acquiring or owning any interest in any portion of the said Property or any improvements thereon, their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I. DEFINITIONS

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

Section 1. “Association” shall mean and refer to Windmill P.D. Homeowners Association, Inc., a nonprofit, Non-stock Corporation incorporated under the laws of the State of Tennessee, its successors and assigns. The Association’s Charter and Bylaws are attached hereto-marked Exhibits “C” and “D”, respectively, and made a part hereof.

Section 2. “Declarant” shall mean Trimark LLC with officers at 2904 Hickory Hill Road, Memphis, Tennessee, 38115, and its successors and assigns. “Declarant” shall be synonymous with “Developer” for purposes of this Declaration.

Section 3. “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereto, as this Declaration may, from time to time, be amended in accordance with its terms.

Section 4. “Parcel” shall mean and refer to the plots of land designated with Numbers 1 through 14, inclusive, as shown on Plat Book 203 Page 33 and as shown on Exhibit “B” attached hereto. For all purposes hereunder, it shall be understood and agreed that Declarant shall be the Owner of all of said Parcels, save and except only those particular Parcels which Declarant conveys in fee simple title by record able deed from and after the date hereof. Ownership of a parcel hereunder shall include an undivided pro rata interest in the easements and use areas owned by the Association.

Section 5. “Member” shall mean and refer to every Person who holds membership in the Association.

Section 6. “Owner” shall mean and refer to the record Owner, whether one or more persons or entities of fee simple title to any Parcel which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, provided, however, that the purchaser at a foreclosure sale or trustee’s sale shall be deemed an Owner.

Section 7. “Person” means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 8. “Property” or “Properties” shall mean that real property described in Exhibit “A” attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 9. “Improvements” shall mean the structures, walls, pavement, plantings and other additions built or placed on the Parcels. It is intended that the Improvements reasonably meant for the Owner of a particular Parcel will lie entirely within said Parcel. In the event that, by reason of construction, settlement, reconstruction or shifting of the Improvements, any minor part of the Improvements reasonably intended for a particular Parcel lie outside that Parcel, an easement of use shall apply thereto in favor of the Parcel to be benefited.

ARTICLE II. PROPERTY

Section 1. Property Subject to Declaration. The property subject to this declaration shall be that certain real property which is, and shall be held transferred, sold, conveyed and occupied subject to this Declaration located in Memphis, Shelby County, Tennessee, and which is more particularly described in Exhibit “A” attached hereto and made a part hereof.

Section 2. Roads and Drainage. The roads, sewer and drainage within The Windmill P.D. are, and shall remain, private roads and drainage, and have not been dedicated to the City of Memphis, or any governmental body. By remaining private, the responsibility for payment of maintenance and repair expenses for said roads and drainage shall remain the responsibility of the individual Parcel Owners, and be paid for by assessments levied by the Association as provided herein. The Association shall be responsible for the maintenance and usage of the roads. Notwithstanding anything herein to the contrary, this paragraph shall not apply to those easements designated as “public” easements.

The Association shall be responsible for the continued maintenance of the roads including any removal of debris caused by falling trees or limbs. The Association shall act promptly in clearing the roads so that the orderly ingress and egress to a particular parcel shall not be hindered.

ARTICLE III. THE ASSOCIATION

Section 1. Members. Every Person, as defined, who is a record Owner of a fee or undivided fee interest of any Parcel within the Property must be a Member of the Association, as defined, provided, however, that anyone who holds such interest solely as

security for the performance of an obligation shall not be a Member. Membership shall be appurtenant and may not be separated from ownership of any Parcel within The Windmill P.D. Ownership of such Parcel shall be the sole qualification for membership.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the parcel, each Owner of a Parcel being entitled to one (1) vote for each Parcel owned, except the Developer, which shall be entitled to three (3) votes for each Parcel owned by it. After the expiration of three (3) years from the date of the conveyance of the first Parcel from Developer to the purchaser, Developer shall only be entitled to one (1) vote for each Parcel still owned by it.

Section 3. Secured Parties. No individual or legal entity holding title to a Parcel as security for any debt or obligation shall be considered as Owner of such Parcel, and such individual or entity shall not be entitled to membership in the Association or to cast a vote on any question or matter affecting the administration of the Association.

Section 4. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of the Members representing a fifty-one percent (51%) majority of the total votes cast, in person or by proxy (provided a quorum exists), shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of statute or of the corporate Charter, or this Declaration, or of the Bylaws, a different vote is required, in which case such express provision shall govern and control. The vote for any membership which is owned by more than one person may be exercised by any of them present at any such meeting unless any objection or protest by any other owner of such membership is noted at such meeting. In the event all of the co-owners of any membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. No member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

Section 5. Proxies. A Member may appoint any other Member or the Developer or any other person permitted by law or by the Bylaws as his proxy. In no case may any Member (except the Developer) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by the Association's Bylaws.

Section 6. Quorum. The presence, either in person or by proxy, of Members representing at least fifty-one percent (51%) of the total votes entitled to be cast shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of members. If the number of Members at a meeting drops below the quorum and the question of lack of a quorum is raised, no business may thereafter be transacted.

ARTICLE IV.
PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Private Roads, such easement shall be appurtenant to and shall pass with the title to every assessed Parcel, subject to the following provisions:

(a) The right of the Association to suspend any enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;

(b) The rights of the Association to provide for and establish easements and rights-of-ways on all private roads, and to regulate parking, motorized and non-motorized vehicular traffic, and to maintain the private roads within The Windmill P.D.;

(c) The right of the Association, in accordance with its Charter and Bylaws, to borrow money for the purpose of improving the streets which the Association is to maintain;

Section 2. Easement for Project Entrance. Declarant hereby reserves for itself and the Association an easement over and upon Parcels 1 and 14, for the purpose of erecting, maintaining, repairing or replacing project entrance structure.

Section 3. Easement for Head Walls, Private Drainage, and Brick Wall. Declarant hereby reserves for itself and the Association an easement over and upon any Parcel for the purpose of erecting, maintaining, repairing and replacing drainage pipe and head walls for receiving and discharging drainage. Further, the Association shall reserve for itself an easement for the location of the Brick Wall installed by Developer, which may or may not be on the dividing lines of the parcels. Wherever the Brick Wall is located shall remain and the easement granted shall be in that location.

ARTICLE V.
MAINTENANCE AND REPAIR

Section 1. Association Responsibilities. The Association shall provide and pay for all maintenance for expenses for the private roads; the brick wall and iron fence, if any; the entrance structures to be built by Developer; the head walls for the drainage pipes located on certain Parcels in the Windmill P.D.; and the landscaping. The entrance to The Windmill shall have a gate, which will be operated by an electronic system and

telephone lines to each residence on each Parcel. The Association shall own and maintain this system.

Section 2. Individual Parcel Owners.

(a) Interior maintenance. Each Owner of a Parcel shall be responsible for all interior maintenance, painting, repairs and upkeep on his Parcel and the improvements thereon.

(b) Exterior maintenance. As shown on Exhibit "B" attached hereto, there will be fourteen (14) residential Parcels. In order to retain the appearance of the development, no exterior maintenance, repairs or replacements which substantially alter the exterior appearance of a Parcel shall be commenced for the improvement of an individual Parcel unless permission is obtained from the Architectural Control Committee of the association, as hereinafter defined.

(c) Drainage. All Parcels have natural drainage. All maintenance expenses associated with the drainage on each Parcel is the responsibility of the Parcel Owner. Any modification to the natural drainage flow shall be designed by an engineer and approved by Declarant.

In the event an Owner of any Parcel in the Property shall fail to maintain the premises and improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Parcel and to repair, maintain, or restore the Parcel and the exterior of the building and any improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Parcel is subject.

ARTICLE VI.
ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Parcel, 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 to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, including road and sewer maintenance; and (3) emergency assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual, special and emergency assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Parcel against which each such assessment is made. Each such collection thereof as are hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Parcel at the time when the assessment fell due.

Section 2. Annual Assessments and Carrying Charges of the Association. Each Member of the Association shall pay to the Association an annual sum (hereinafter sometimes referred to as “assessments” or “carrying charges”) equal to the Member’s proportionate share (1/14th) of the sum required by the Association, as estimated by its Board of Directors, to meet the annual expenses, including, but in no way limited to, the following:

- (a) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any; and
- (b) The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any; and
- (c) The cost of extended liability insurance and the cost of such other insurance as the Association may effect; and
- (d) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements; and
- (e) The estimated cost of repairs, maintenance and replacements of the roads, walls, fences, guard house, if any and landscaping and any other item the Association may be responsible for; and

Except as provided in Section 11 of this Article VI, the Board of Directors of the Association shall determine the amount of the annual assessment against each Parcel at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require as provided in the Bylaws. Written notice of the annual assessment shall be sent to every Owner subject thereto. The 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 specific Parcel has been paid.

Section 3. Special Assessments. In addition to the regular assessments authorized by this Article, the Association may levy in any assessment year a special assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of any described capital improvement for which the Association is specifically responsible or for such other purposes as the Board of Directors may consider necessary, provided that such assessment shall have the assent of the Members representing two-thirds (2/3) of the total number of votes eligible to be cast. Notice of a meeting of the appropriate Members shall be sent to all Members at least ten (10) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting.

Section 4. Emergence Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of Members or Property of Members, the Board of Directors, acting pursuant to this section, may declare an emergency assessment in such amount payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount and time of payment, shall be governed by all other provisions of this Declaration. Such assessment shall be borne pro rata by all Members of the Association. The Board of Directors shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment is made in good faith.

Section 5. Non-Payment of Assessment. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Parcel or Parcels belonging to the Member against whom such assessment is levied and shall bind such Parcel or Parcels in the hands of then Owner, his heirs, devisees, personal representatives and assigns. To evidence the lien of any unpaid and delinquent assessments, the Board of Directors shall prepare a written notice setting out the amount of the unpaid indebtedness, the name of the Owner of the Parcel, and a description of the Parcel. Said notice shall be signed by a member of the Board and recorded in the Shelby County Register's Office. The personal obligation of the Member to pay such assessment shall, however, remain his personal obligation for the statutory period, and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration or the Bylaws, or of any installment thereof, may be maintained without foreclosing or waiving the lien created herein.

Any assessment levied pursuant to this Declaration or any installment thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Tennessee, and may, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the said Board may fix. The Association may bring an action at law against the Member personally obligated to pay the same or foreclose the lien against the Parcel or Parcels subject to prior mortgages or deeds of trust upon the Parcel or Parcels, then belonging to said Member in either of which events, the Association may collect from the said Member interest, costs and reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Parcel.

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Parcel Owner grants the Board of Directors of the Association irrevocably the power to sell his Parcel 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 prior recorded mortgage or deed of trust upon the Parcel. The Association is hereby authorized to take any and all courses of action available to them for collection of the assessment, which the laws of the State of Tennessee allow. Any

such sale shall be made after first advertising the sale of said property for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of Shelby, State of Tennessee, giving notice of the time and place of such sale and by written notice of the time and place of such sale to the Owner of the Parcel at his last known address. Any sale of a Parcel to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption, including the statutory right of redemption, homestead, and dower and all other exemptions, all of which are expressly waived by the Parcel 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 Parcel, except real estate and ad valorem taxes assessed against the Parcel and prior recorded mortgages or deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of expenses of protecting the Property and the expenses of litigation, attorneys' fees, and sales commission; and second, to the payment of real estate and ad valorem taxes assessed against the Parcel and any prior recorded mortgages or deeds of trust (unless sold subject to said mortgage or deed of trust); and third, to the payment of all amounts due the Association under the terms of the Declaration and Bylaws; and the balance, if any, to the Parcel Owner whose Parcel is sold, and his assigns. Upon any default in the payment of any assessment, the Board of Directors shall have the right to all rents, issues, and profits from the Parcel in default and shall have the right to secure the payment through notice to those in possession of the Parcel or by entry into possession in the same manner as a mortgagee entering into possession following default. The Association may enforce its lien by whatever means available, including the power of sale granted herein or filing suit for foreclosure in the appropriate court.

All rights, remedies, and privileges granted to the Board of Directors or a Parcel Owner, pursuant to any terms, provisions and covenants or conditions of the Declaration and Bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party by the Declaration and Bylaws or at law or in equity.

The Association may notify the holder of the first mortgage on any Parcel for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the Owner of such Parcel is in default with respect to the performance of any other obligation hereunder for a period in excess of ninety (90) days.

Section 6. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

Section 7. Priority of Lien. The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except as follows:

(a) General and special assessments for real estate taxes on a Parcel;
and

(b) The liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the Parcel prior to the assessment of the lien thereon or duly recorded on said Parcel after receipt of a written statement from the Board of Directors reflecting that payments on said liens were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Section 8. Subordination and Mortgage Protection. NOTWITHSTANDING any other provisions hereof to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Parcel shall be subordinate to and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such interest made in good faith and for value received, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Parcel pursuant to a foreclosure or any other proceeding in lieu of foreclosure. Any such delinquent assessments which are extinguished pursuant to the foregoing provisions may be reallocated and assessed to all Owners as a common expense, including the purchaser at foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the Parcel from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment which said lien, if any claimed shall have the same effect and be enforced in the same manner as provided herein

No amendment to this Section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof shall join in the execution of such amendment.

Section 9. Additional Default. Any recorded first mortgage secured by a Parcel in The Windmill P.D. may provided that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby), but the 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 (or the indebtedness secured thereby) by reason of Section 8 of this Article shall not be altered, modified, or diminished by reason of such failure.

Section 10. Uniform Value of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Parcels and may be collected on a monthly basis.

Section 11. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Parcels upon written

notification by Declarant or its agent. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Until December 31, 2005, the maximum assessment shall be One Hundred and No/100 Dollars (\$100.00) per Parcel per month. Until December 31, 2005, the Declarant shall have the sole authority to determine whether an assessment shall be levied. After December 31, 2005, the assessment shall be fixed by the Board of Directors as set out in Section 2 of this Article VI.

ARTICLE VII.
ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. An “Architectural Control Committee” is hereby established. The initial committee shall consist of Mac Ghassemi and Lavelle Walker. These individuals shall serve for a period of five (5) years, or until they resign from the Committee by written notice to the Board of Directors of the Association. Upon the expiration of five (5) years from the date hereof, or the earlier resignation, the Board of Directors of the Association shall then appoint the Architectural Control Committee, which shall be composed of three (3) or more individual Parcel Owners. The affirmative vote of a majority of the membership of the Architectural Control Committee shall be required to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein.

Section 2. Approvals Necessary, Rules of Committee and Remedies for Violations. With the exception of the Developer, no structure of any kind or nature or any fence or barrier shall be commenced, erected, laced, moved onto, or permitted to remain on any of the Parcels within The Windmill P.D., nor shall any existing structures, fence or barrier upon any Parcels be altered in any way which substantially changes the exterior appearance (which includes but is not limited to changes in paint color and re-roofing) thereof, nor shall there be any additions, attachments, or deletions to improvements, nor shall there be any changes in landscaping, without the written consent of the Architectural Control Committee; nor shall any new use be commenced on any Parcel unless plans and specifications (including a description of any proposed use) shall have been submitted to and approved in writing by the Architectural Control Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Control Committee, but in any event shall include;

(1) A site plan of the Parcel showing the nature, exterior, color scheme, kind, shape, height, materials, and location with respect to said Parcel (including proposed front, rear and side setback) of all structures, fences or barriers, and location of all parking spaces and driveways on the Parcel; and

(2) Said site plan shall also show the minimum ground floor area of a single family dwelling, exclusive of porches and garages, to be 4,000 square feet for a dwelling, provided, however, the Architectural Control Committee shall

have the right to lower the minimum square footage requirement for any Parcel for the orderly development of and integrity of The Windmill P.D.; and

- (3) Grading and landscaping plans of the particular Parcel; and
- (4) Front yard exterior light standards, the design, material and location to be specified by the Architectural Control Committee, said lights to be operated by a photo cell; and
- (5) Where a drainage pipe may be required for a driveway, a masonry head wall of decorative stone used in the theme of the development or brick which matches the residence on the Parcel may be required on each end of the drive culvert.

The Architectural Control Committee may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on the Parcels including, without limitation the exterior lighting and planting and may issue statements of policy with respect to approval or disapproval of the architectural styles or details or other matters which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Architectural Control Committee at any time and no inclusion in or omission from or amendment of any such rule or statement shall be deemed to bind the Architectural Control Committee to approve or disapprove any feature or matter subject to approval or the waive the exercise of the Architectural Control Committee's discretion as to any such matter, but no change or policy shall affect the finality of any Parcel of any plans or specifications previously submitted to and approved by the Architectural Control Committee but such approval shall not be deemed a waiver by the Architectural Control Committee in its discretion to disapprove such plans or specifications or nay features or elements included herein if such plans, specifications, features or elements are subsequently submitted for use on any other Parcel. Approval of any such plans and specifications relating to any Parcel, however, shall be final as to that Parcel and such approval may not be revoked or rescinded thereafter provided that the plans and specifications as approved and any condition attached to any such approval have been adhered to and complied with in regard to all structures, fences or barriers on the uses of the Parcel in question.

In the event the Architectural Control Committee fails to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the same shall be deemed to have been approved as submitted and no further action shall be required.

If any structure, fence or barrier shall be altered, erected, placed or maintained (including exterior maintenance) upon any Parcel or any new use commenced on any Parcel, otherwise that in accordance with plans and specifications approved by the Architectural Control Committee as required herein, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of the restrictions herein and without the approval required herein, and upon written notice from

the Architectural Control Committee any such structure, fence or barrier so altered, erected, placed or maintained upon any Parcel in violation hereof shall be removed or re-altered, and such use shall be terminated so as to extinguish such violation.

If fifteen (15) days after the notice of such violation, the Owner or Owners of the Parcel upon which such violation exists shall not have taken reasonable steps towards the removal or termination of the same, the Association by its officers or directors shall have the right through its agents and employees to enter upon such Parcel and to take such steps as may be necessary to extinguish such violation, and the costs thereof shall be a binding personal obligation of such Owner as well as a lien upon the Parcel in question upon the recording of such with the Office of the Register of Shelby County, Tennessee.

Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by the Architectural Control Committee, the Architectural Control Committee shall, upon written request of the Owner thereof, issue a letter of compliance in form suitable for recordation, identifying such structure and the Parcel on which such structure is placed and stating that the plans and specifications, location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation and recording of such letter shall be at the expense of the Owner or Owners of such Parcel. Any letter of compliance issued in accordance with the provisions of this paragraph shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrance in good faith and for value or as to any title insurer, such letter shall be conclusive evidence that all structures and the use or uses described therein comply with all the requirements of these restrictions and all other requirements as to which the Architectural Control Committee exercises any discretionary or interpretive powers.

The Architectural Control Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to these restrictions payable at the time such plans and specifications are so submitted.

Any agent of Developer or of the Architectural Control Committee may, at reasonable times, enter upon and inspect any Parcel and any improvements thereon for the purposes of ascertaining whether the maintenance of such Parcel and the maintenance, construction, or alteration of structure thereon are in compliance with the provisions of these restrictions, and no such persons shall be deemed to have committed a trespass or other wrongful acts by reason of such entry or inspection.

The Association or any Owner of any Parcel contained within The Windmill P.D. shall have the right to enforce by any proceeding at law or in equity all conditions, restrictions, covenants, reservations and easements herein or hereinafter contained or otherwise contained in any deed to any Parcel. Failure by any Owner to enforce any of such proceedings shall in no event be deemed a waiver of the right to do so thereafter.

Should a request to the Committee come from a Committee member; the other members of the Committee shall select a disinterested Parcel Owner to take the place of the Committee member making the request.

ARTICLE VIII.
RESTRICTIVE COVANTS

Section 1. Residential Use. Parcels 1 through 14 inclusive shall not be used except for private residential purposes.

Section 2. Prohibited Uses and Nuisances. In order to provide for a congenial occupation of the homes within The Windmill P.D. and to provide for the protection of the values of the entire development, the use of the residences shall be in accordance with the following provisions:

(a) Said property is hereby restricted to residential dwellings for residential use. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any portion of said Property at any time as a residence, either temporarily or permanently.

(b) Each Parcel shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof and all easements, restrictions and covenants set out in the Plat attached hereto as Exhibit "B".

(c) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain, during the period of the sale of said Parcels, upon such portion of the premises as Declarant deems necessary, such facilities as, in the sole option of the Declarant, may be reasonably require, convenient or incidental to the sale of said Parcels, including, but without limitations, a business office, storage area, construction yard, signs, model units, and sales office.

(d) No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Parcels, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

(e) No advertising signs (except one (1) of not more than five (5) square feet "for rent" or "for sale" sign per Parcel), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said Property, nor shall said Property be used in any way for any purposes which may endanger the health or unreasonably disturb the Owner of any Parcel or any resident thereof. No business activity of any kind whatever shall be conducted in any building or in any portion of said Property; provided, however, the foregoing covenants shall

not apply to the business activities, signs and billboard or the construction and maintenance of buildings, if any, of Declarant, its agents and assigns during the development and sales period of Parcels in The Windmill P.D. unless otherwise approved in writing by the ACC.

(f) All equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of the private drives and street. All rubbish, trash or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

(g) Without prior written approval and the authorization of the Architectural Control Committee, no exterior television, radio antennas or satellite dishes of any sort shall be placed, allowed, or maintained upon any portion of the improvements located upon the Property nor upon any structure situated upon the Property, should any such master system or systems be utilized and require any such exterior antenna.

(h) No action shall at any time be take by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of other Owners.

(i) No recreation vehicles or commercial vehicles, including but not limited to boats, boat trailers, house trailers, camping trailers, motorcycles, pick-up trucks, or similar type items shall be kept other than in the garage or otherwise screened from the view of neighbors or the roads.

(j) Grass, weeds, vegetation and debris on each Parcel shall be kept mowed and cleared at regular intervals by the Owner thereof so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines, debris and plants which die shall be promptly removed from such Parcels. Developer, at its option and its discretion, may mow and have dead trees and debris removed from such Parcels and the Owner of such Parcel shall be obligated to reimburse Developer for the cost of such work should he refuse or neglect to comply with the terms of this paragraph.

(k) No obnoxious or offensive trade or activity shall be carried on upon any Parcel in this development nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners within The Windmill P.D.

(l) No building material of any kind or character shall be placed or stored upon any of said Parcels until the Owner is ready to commence improvements. Building materials shall not be placed or stored in the street or between the curb and property lines.

(m) After the initial approval of a plan for a residence has been approved, no tree larger than eight (8) inches in diameter measured twelve (12) inches from the grade shall be removed, unless it is dead and poses a threat to the safety and health of the individuals residing in the residence, without the approval of the Architectural Control Committee. This provision applies to the area between the private road and the setback line as well as all setback lines, side or rear.

(n) All fences located in front of the residence or the Architectural Control Committee shall approve which face the private road. Privacy and sight-proof fences are not allowed on the property lines.

(o) The minimum square footage for a residence shall be 4,000 heated and cooled square feet if a one-story residence. A two-story residence shall have at least 4,000 heated and cooled square feet and shall have at least 2,500 of this square footage on the ground floor. The Architectural Control Committee shall, in its sole discretion, have the ability to vary the minimum square footage.

(p) There shall be no violation of any rules, which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the Bylaws authorized to adopt such rules.

ARTICLE IX. COMMON EASEMENTS

Section 1. Easement of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Parcel and such portion or portions of the common improvements adjacent thereto or as between adjacent Parcels due to unintentional placement or settling or shifting or Improvements constructed, reconstructed or altered thereon.

Section 2. Easement for Utilities, Etc. Declarant hereby reserves for itself and its designees (including without limitation, the City of Memphis, County of Shelby or any utility) blanket easements upon, across, over and under all of the private roads and to the extent shown on any plat over the Parcels for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, security, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas and electricity. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to the Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the property described on Exhibit "A".

ARTICLE X.
INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the private roads and common areas. The Board shall also obtain a public liability policy covering the private roads, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000.00) limit per occurrence, and a Thirty Thousand Dollar (\$30,000.00) minimum property damage limit.

Premiums for all insurance shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost of the improvements. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance.

Cost of insurance coverage obtained by the Association and other improvements for which the Association is responsible shall be included as an Assessment as defined in Article VI.

The Association's Board of Directors shall make every reasonable effort to secure insurance policies that will provide for the following:

- (i) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guest;
- (ii) A waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
- (iii) That no policy may be cancelled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee;
- (iv) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(v) That no policy may be canceled or substantially modified without at least then (10) days prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, a worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three (3) months assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

Section 2. Individual Insurance – Repair and Reconstruction. By virtue of taking title to a Parcel subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance on the Parcel and structures constructed thereon for full replacement cost. In the event of damage or destruction by fire or other casualty, the Owner shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to repair or rebuild such damage or destroyed portions of the improvements in a workmanlike manner in conformance with the original plans and specifications of the building (including landscaping). In the event the Owner refuses or fails to so repair or rebuild any and all such damage to his improvements within thirty (30) days, the Association, by and through its Board of Directors, is hereby authorized by such Owner to repair and rebuild the improvements in a good and workmanlike manner in conformity with the original plans and specifications. The Owner shall then repay the Association in the amount actually expended for such repairs, and the Association will have a lien securing the payment of same identical to that provided for in Article VI, securing the payment of said sum expended and subject to the power of sale and foreclosure as set forth in said Article.

The individual Owners shall make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Association, other Parcel Owners, and their respective tenants, servants, agents and guests.

The individual Owners shall furnish a certificate of insurance to the Association or its manager.

ARTICLE XII. MORTGAGEE'S RIGHTS

Upon request, the Association shall make available to any Parcel Owner and lender, and to any holder, insurer or guarantor of any first mortgage, current copies of this

Declaration, the Bylaws and other rules concerning the affairs and management of The Windmill P.D., and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours.

Upon request, the Association shall furnish to any holder of a first mortgage a financial statement for the Association's immediately preceding fiscal year.

Upon written request, to the Association, identifying the name and address of the holder, insurer or guarantor and the unit number or address, any mortgage holder, insurer or guarantor will be entitled to timely written notice of:

- (a) Any condemnation of casualty loss that affects either a material portion of the project or the Parcel securing its mortgage;
- (b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Parcel on which it holds the mortgage;
- (c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Owners' Association;
- (d) Any proposed act that requires the consent of a specified percentage of mortgage holders.

The consent of at least sixty-seven percent (67%) of the votes and the consent of the Declarant, as long as it owns any land subject to this Declaration, and the approval of the eligible holders of first mortgages on Parcels to which at least sixty-seven percent (67%) of the votes subject to a mortgage appertain, shall be required to terminate the Association.

The consent of at least sixty-seven percent (67%) of the votes and of the Declarant, as long as it owns any land subject to this Declaration, and the approval of eligible holders of first mortgages on individual Parcels to which at least fifty-one percent (51%) of the votes subject to a mortgage appertain, shall be required to materially amend any provisions of the Declaration, Bylaw or Charter of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following: (i) voting; (ii) assessments, assessment liens, not including a subordination of said lien; (iii) reserves for maintenance, repairs and replacement of the private roads; (iv) insurance or fidelity bond; (v) rights to use of the private roads; (vi) responsibility for maintenance and repair of the Property; (vii) boundaries of any residential Parcel; (viii) imposition of any right of first refusal or similar restrictions on the right of any Owner to sell, transfer or otherwise convey his Parcel; (ix) any provisions included in the Declaration, Bylaws and Charter of Incorporation which are for the express benefit of the holders, guarantors or insurers of first mortgages on residential units, which provisions do not set out a required number of votes to amend the particular provision.

ARTICLE XIII.
GENERAL PROVISIONS

Sections 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten (10) years each. Unless specifically prohibited herein, this Declaration may be amended by an instrument signed by Owners holding not less than sixty-seven percent (67%) of the votes of the membership at any time. Any amendment must be properly recorded to be effective. During the first three (3) years from the date of recording of this Declaration, any amendment must also be approved by the Declarant in writing to be effective.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES THE RIGHT FOR A PERIOD OF FIVE (5) YEARS FROM THE DATE HEREOF TO UNILATERALLY AMEND THIS DECLARATION TO THE REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL AND FOR THE REQUIREMENTS OF ANY MORTGAGE LENDER OR FOR ANY REASON THAT THE DECLARANT DEEMS ADVISABLE FOR THE ORDERLY DEVELOPMENT OF THE WINDMILL P.D. WITHOUT THE NECESSITY OF APPROVAL FROM THE ASSOCIATION OR OWNERS.

Section 2. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

Section 3. Enforcement. The Declarant, the Association or any Member, shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure by the Association or any Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement by the Association shall be chargeable to the Owner of the Parcel violating these covenants and restrictions and shall constitute a lien on the Parcel, collective in the same manner as assessments hereunder.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

Section 5. Waiver. No restriction, condition, obligation or provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 6. Gender, Etc. Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused these presents to be signed by the officer duly authorized to do so as of the day and year first written.

WINDMILL PLANNED DEVELOPMENT

By: Trimark LLC

By: _____
M.R. Ghassemi, PE, RLS,
Chief Manager & Member

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, personally appeared M.R. Ghassemi, with whom I am personally acquainted and who, upon oath, acknowledged himself to be the Chief Manager and member of Trimark LLC, within named bargainor, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the LLC by himself as such officer, and he further acknowledged that he executed said instrument as the free act and deed of the LLC.

WITNESS my hand and Notarial Seal at office in said State and County this
_____ day of _____, 2003.

Notary Public

My Commission Expires:
