

DECLARATION OF PROTECTIVE COVENANTS
OF
HIGHGATE MOUNTAIN ESTATES

This Declaration of Protective Covenants is made and entered into this 16 day of December, 2002, by The McLean Family Company, LLC, a Tennessee Limited Liability Company as (the "Declarant").

WITNESSETH

WHEREAS, the Declarant is presently the fee simple owner of certain real property located in the Eleventh (11th) Civil District of Sevier County, Tennessee, as shown on plat entitled "Highgate," of record in Large Map Book 474, Page 125, Register's Office, Sevier County, Tennessee, which it acquired by deed of record in Warranty Deed Book 588, Page 225, Register's Office, Sevier County, Tennessee, (the "Property");

WHEREAS, the Property has been subdivided and platted into the seven (7) lots to be designated as Highgate Mountain Estates, (the "Subdivision");

WHEREAS, it is to the benefit and advantage of the Declarant and its successors in ownership of the Property, that protective covenants regulating the use of the Property be established, set forth, and declared to be covenants running with the Property or any part thereof; and

WHEREAS, these covenants shall not apply to any other land owned by the Declarant even though it may be contiguous with the Property or any part thereof.

NOW THEREFORE, in consideration of the aforesaid benefits, the Declarant does hereby proclaim, publish, and declare that the following numbered restrictive covenants shall apply to the Property and shall constitute covenants running with the land and be binding upon all persons claiming under the Declarant until terminated by operation of law or as hereinafter provided.

1. DEFINITIONS.

- a. "Association" means Highgate Mountain Estates Property Owner's Association. Each lot owner shall be a member of the Association, which shall be an unincorporated association comprised of each and all of the lot owners, unless and until the same is incorporated, at which time it shall be an incorporated property owner's association, the members of which shall be each and all of the lot owners. Each lot and each lot owner shall be subject to all duly adopted articles, by-laws, regulations and resolutions of the Association; but until the same are adopted, the Association shall meet at least annually, and at each such meeting the owners of a majority of the lots shall constitute a quorum. Each lot shall have only one vote and action shall be by the majority vote.
- b. "Board" means the Board of Directors of the Association.
- c. "By-laws" means the By-laws of the Association.
- d. "Declarant" means The McLean Family Company, LLC, a Tennessee Limited Liability Company.
- e. "Declaration" means this Declaration of Protective Covenants for the Subdivision, and as the same may be supplemented or amended from time to time.

- f. "**Improvements**" means all buildings, out-buildings, streets, roads, driveways, parking areas, fences, retaining and other walls, rock gardens, hedges, poles, wells, water collection pools, lighting, signs, antenna, and any other structure of any type or kind or any land clearing whatsoever.
- g. "**Lot**" means any numbered lot designated on the Subdivision plat.
- h. "**Owner**" means:
 - i. any person, firm, corporation or legal entity (including the Declarant) who or which holds fee simple title to any Lot.
 - ii. any person, firm, corporation or legal entity who has contracted to purchase fee simple title to any Lot pursuant to a written agreement, in which case under the agreement the former Lot Owner shall cease to be the "Owner" of the Lot for the purpose of this Declaration for so long as the agreement is in effect.
- i. "**Plat**" means the Subdivision plat referenced above as well as all other future maps or plats of the Subdivision as they may be from time to time recorded.
- j. "**Single Family Dwelling**" means a residential dwelling for one or more persons, each related to the other by blood, marriage, or legal adoption, or, alternatively, a group of not more than four (4) adult persons not so related who shall maintain a common household in such dwelling.

2. **RESIDENTIAL RESTRICTIONS**

- a. No building shall be erected or maintained on a Lot and no tree removed within twelve (12) feet of side lines and twenty (20) feet of rear lines. Any building must be set back at least twenty-five (25) feet from any road or road right of way. This restriction may be waived by the Declarant insofar as the set-back required may be reduced in cases where the land contour is such as to make a reduced set-back more practical.
- b. The exterior of all houses and other structures must be completed within eighteen (18) months after the construction of same have commenced except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergencies or natural calamities, in which case, reasonable additional time for completion may be granted.
- c. Each Lot shall be used for residential purposes exclusively. No structure shall be erected, altered, placed or permitted to remain on a Lot other than one detached single-family dwelling and no more than one garage, that shall not exceed 25% of the square footage of the main house, shall be permitted on a lot. The dwelling shall contain not less than four thousand (4,000) square feet of heated living area exclusive of porches, garages and carports; provided however, the Declarant/Association may grant a reduction of up to 15% of the total square footage required in the case of exceptional architectural design and/or of unusually high construction cost.
- d. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept conditions or buildings or grounds on such a Lot which shall tend to substantially decrease the natural beauty of the Subdivision as a whole or of the specific area.
- e. No activity constituting a nuisance shall be performed or created on any Lot. No livestock, poultry, or other animals shall be kept on a Lot excepting those maintained

solely as household pets, and they shall not be used for breeding purposes.

- f. Each Owner shall provide receptacles for garbage in a screened area not generally visible from the roads.
- g. All new utility lines installed to any Improvements on any Lot shall be placed underground from the existing poles.
- h. No structure of a temporary character shall be placed upon a Lot at any time, provided, however, that the prohibition shall not apply to shelters used by the contractor during the construction of the main dwelling house, it being clearly understood that these later temporary shelters may not at any time be used as residences or permitted to remain on the Lot after completion of construction.
- i. No trailer, mobile home, motor home, tent, or other similar outbuilding or structure shall be placed on a Lot at any time, either temporarily during construction or otherwise, or permanently.
- j. No Lot shall be reduced or subdivided. However, nothing in this paragraph shall prevent or stop Owners from selling part of a Lot to the Owner of the adjoining Lot, in which event the part sold shall thereafter be considered a part of such adjoining Lot, provided that no remaining Lot shall be less than eighty percent of the original acreage.
- k. No Single Family Dwelling or garage may be used for overnight rental; provided however, this restriction shall not prevent the lease of a Single Family Dwelling for a duration of three months or longer.

3. EASEMENTS

- a. It is expressly understood that the Declarant has caused to be constructed a public road to service the Subdivision or to any easements or utilities thereon, subject to these Protective Covenants.
- b. If any person for any reason, including construction on any Lot, damages the Subdivision roads, another Lot, or the improvements thereon, that person or Owner shall pay to the Association such amounts necessary to repair same.
- c. Easements are reserved to the Declarant, its successors or assigns, upon the for the purpose of installation and maintenance of utilities, drainage facilities and storm sewers. Utilities include but are not limited to electrical transmission, distribution lines and telephone lines. This easement includes the right to go upon the Lots to inspect, prepare, install, maintain, repair, replace utilities or do any other act reasonably necessary to the enjoyment of this easement. The location of this easement shall be in the Subdivision roadways and within the setback line on or more Lots is combined into a single Lot of each Lot; provided, in the event of such easement shall not exist with respect to interior Lot lines unless use of such easement for such purpose has already begun.
- d. Declarant reserves unto itself, its successors and assigns, and declares for the benefit of the Association, its successors and assigns, a perpetual easement for the erection, maintenance and repair of the Subdivision signs upon Lots 1 and 2, as shown on the plat, which easement shall include the right to erect, maintain and repair walls and lighting at the site of the sign and to landscape the area in the vicinity of the sign.

4. ASSESSMENTS

- a. Any assessment levied by the Association against any Lot which becomes delinquent shall constitute a lien upon such Lot when properly filed of record in the office of the Register of Deeds for Sevier County, Tennessee. The claim of lien shall be filed in the name of the Association. The Association shall, whether or not incorporated have the right to proceed in its own name in any court of competent jurisdiction.
- b. If any delinquent assessment is placed in the hands of an attorney for collection, there shall be added to the amount due all costs of collection, including all reasonable attorney's fees.
- c. The lien shall include the amount of all interest which accrues and continues to accrue upon the assessment, and shall include the aforementioned costs of collection and attorney's fees.
- d. All assessments, interests, cost and attorney's fees shall be and constitute the personal joint and several obligation of each Lot Owner. The Association or any other Owner, may bring action against the Owner in default to seek a money judgment for the amount of the assessments, interest, cost of collection and attorney's fees.
- e. Any person or organization may purchase the Lot at any sale ordered pursuant to an action to foreclose the lien.
- f. Suspension: The Association shall not be required to transfer membership on its books or to allow the exercise on any rights or privileges of membership on account thereof of any Owner or to any person claiming under them unless all assessments and charges to which they are subject have been paid in full.

5. ARCHITECTURAL CONTROL COMMITTEE

- a. There is hereby established for an Architectural Review Committee ("ARC") to insure the development of and the improvement of Lots in the Subdivision therein in accordance with the Declaration, and to control the type, nature, and design of all buildings, structures and other improvements, including landscaping, constructed on the Property. The Declarant shall constitute, or shall have the right to appoint the members of the ARC, unless and until the Declarant shall assign such right and responsibility to the Association, in which event the Board of Directors or other governing body of the Association shall constitute, or shall have the right to appoint the members of the ARC. At all meetings of the ARC, two-thirds (2/3) of its members shall constitute a quorum, and shall act by majority vote to keep proper records and minutes. No principal residence, garage or storage building shall be erected, placed, or altered on any Lot within the Subdivision until the proposed building and plot plans showing detailed specifications, elevation, dimensions, exterior color and finish, location of improvements, drives, and parking areas shall be specifically approved in writing by the ARC. In addition, no equipment (recreational or otherwise), swimming pool, well, fence, hedge used as a wall, or other structure or man-made improvement whatsoever shall be erected, placed or altered on any Lot within the Subdivision until the same shall have been specifically approved by the ARC. No land clearing, vegetable gardening, filling, or grading may be done on any Lot within the Subdivision until the plans for the same shall have been specifically approved in writing by the ARC. Any tree removal or trimming involving trees or limbs five inches or larger in diameter must be approved in writing by the ARC. It is envisioned and accepted, however, that

lot owners will remove and/or trim trees that obstruct principal mountain views. Declarant and ARC will approve same subject to submission by owner of an acceptable landscaping plan showing the proposed removal or trimming to be done.

- b. The ARC shall review all plans and specifications and requests to it taking into consideration harmony of exterior design, color, and location in relation to other structures and Lots in the Subdivision. The ARC shall have the authority to grant variances to the set back requirements contained herein above. Every Owner agrees for himself, his heirs, successors and assigns, by the acceptance of his deed that the ARC shall have total authority to accept or reject any plans or request submitted to it and refusal or approval of plans, locations, specifications, or other requests may be based by the ARC upon any grounds including purely aesthetic considerations. Provided, however, the ARC may not act arbitrarily or unreasonably.
- c. All plans, specifications, and other requests submitted to the ARC must be submitted at least forty-five (45) days prior to the anticipated commencement of the proposed work. All submissions to the ARC shall contain the name, address, and telephone number of the Lot Owner, and the name, address and telephone number of any contractor or architect involved. The ARC shall transmit its decision to the affected Lot Owner within thirty (30) days of receipt of all information required or needed to make its decisions.
- d. Liability: Notwithstanding the approval by the ARC of plans and specifications or its inspection of the work in progress, neither it, Declarant, the Association, nor any person acting in behalf of any of them shall be responsible in any way for any defects in any plans or specifications or other materials submitted to the ARC, nor for any defects in any work done pursuant thereto. Each person submitting such plans or specifications shall be solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto.

6. MISCELLANEOUS

- a. All covenants and other provisions herein contained shall be deemed subject and subordinate to all first mortgages or first deeds of trust now or thereafter executed upon any Lot, and none of the covenants shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed to secure debt; provided however, that if any Lot is sold under a foreclosure of mortgage or under the power of sale or foreclosure provisions of any deed to secure debt, and purchaser at such sale, and his or her successors and assigns shall hold such Lot so purchased subject to all the covenants and other provisions of this Declaration of Protective Covenants.
- b. 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. These covenants shall likewise be considered separable with respect to their imposition by the Owners in deeds of conveyance as provided above.
- c. The failure of the Declarant, its authorized agent or representative, or its successors or assigns, to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions, or agreements herein contained shall not be construed as a waiver or a relinquishment in the future of the enforcement of any such term, covenant, condition, provision, or agreement. The acceptance or performance of anything required to be performed with knowledge of the breach of a term, covenant,

condition, provision, or agreement shall not be deemed as a waiver of such breach, and no waiver by the Declarant, its authorized agent or representative of any term, covenant, condition, provision, or agreement shall be deemed to have been made unless expressed in writing and signed by the Declarant, its authorized agent or representative.

- d. Zoning regulations applicable to the Property shall be observed. In the event of any conflict between any provision of such zoning restrictions and the restrictions of this Declaration, the more restrictive provisions shall apply.
- e. The covenants and restrictions of this Declaration shall run with and bind the Property and shall remain in force and effect and inure to the benefit of the owners of the Property and be enforceable by the owners of the Property or any one of them subject to this Declaration. However, modifications or changes herein may be made as provided in the Association's By-laws. The grantee of any deed or other conveyance of any interest in the Property whether or not expressed in such deed or other conveyance, shall be bound by the terms and provisions hereof and shall take their interest in the Lot subject to the provisions of this Declaration and the Association's By-laws and shall be deemed to have assented to the terms and conditions hereof.
- f. The headings contained in this Declaration are solely for convenience and are not controlling.
- g. Declarant expressly reserves the right to form a non-profit corporation or association whose members will be all of the Lot Owners. The corporation or association shall succeed to all rights and obligations of the Lot Owners with respect to enforcement of restrictions. Each Lot Owner will join the Association or corporation and will pay the annual dues assessed thereby and each Lot Owner shall have one vote in the election of the Association and corporation governing board.
- h. In the event of a violation or breach of any of these restrictions, covenants and conditions by any Lot Owner, employee or agent of such Owner, the Owners of other Lots also subject to the above restrictions, covenants and conditions, jointly and severally, shall have the right to proceed at law, or in equity to compel the compliance with the terms hereof, or to prevent the violation or breach of any term, herein. In addition to the foregoing, the Declarant, its successors and assigns, shall have the same rights of enforcement and whenever there shall have been built on the Property any structure which is in violation of these restrictions, the Declarant, its successors and assigns, shall have the right to enter upon the Property where such violation exists, and summarily abate or remove the same at the expense of the Owner violating the same, if after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. Any such entry and abatement or removal shall not be deemed a trespass, the failure to enforce any right, reservation, restriction or condition contained in this instrument, however long continued, shall not be deemed a waiver of the right to do so hereafter, as to the same breach or as to a breach occurring prior to or subsequent thereto, and shall not bar or affect the validity of the other restrictions, covenants, and conditions, each section hereof being separate and individual.
- i. These restrictions, covenants and conditions shall continue in full force and effect for successive periods of thirty (30) years each, automatically renewable unless a majority of the Owners shall terminate the same by written notice thereof, duly recorded in the Office of the Register of Deeds for Sevier County,

Tennessee.

7. AMENDMENTS: This Declaration may be amended by the Declarant as long as the Declarant owns at least two Lots subject to these Protective Covenants, by means of a duly recorded amendment signed by the Declarant; and after the Declarant no longer owns such amount of land, this Declaration may be amended by means of a duly recorded Declaration signed by 2/3rds of the Lot Owners subject to this Declaration or by action of the Association after it is incorporated.

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Protective Covenants and has caused its seal to be hereto affixed on the day and year first above written.

Signed, sealed and delivered in the presence of:

THE MCLEAN FAMILY COMPANY, LLC, A
TENNESSEE LIMITED LIABILITY COMPANY

By: Victor H. McLean, III Chief Manager
Victor H. McLean, III, Chief Manager

By: James F. McLean
James F. McLean, Secretary

STATE OF TENNESSEE
COUNTY OF KNOX

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared **Victor H. McLean, III**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself to be the Chief Manager of The McLean Family Company, LLC, a Tennessee Limited Liability Company, the within named bargainor, a limited liability company, and that he as such Chief Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Chief Manager.

WITNESS my hand and Official Seal at office in said State and County on the 16th day of December, 2002.

Sean M. Mueller
Notary Public



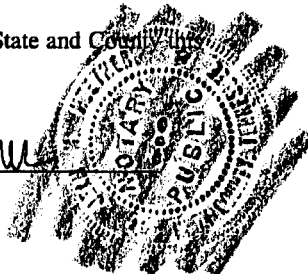
My Commission Expires: 10/05/03

STATE OF TENNESSEE
COUNTY OF KNOX

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared **James F. McLean**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself to be the Secretary of The McLean Family Company, LLC, a Tennessee Limited Liability Company, the within named bargainor, a limited liability company, and that he as such Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Secretary.

WITNESS my hand and Official Seal at office in said State and County this
16th day of December, 2002.

Sean M. McLean
Notary Public



My Commission Expires: 10/06/03

McLean Family Limited Partnership 020515 Restrictions

02057958
12/16/2002 - 03:20 PM

0 PGS : AL - RESTRICTIONS	
AMOUNT 2213-002087958	
Book: 1581 Page: 562 - 569	
VALUE	0.00
NOTARY FEE	0.00
TRANSFER TAX	0.00
RECORDING FEE	60.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	62.00

STATE OF TENNESSEE, COUNTY OF DEWITT
SHERRY ROBERTSON HUSKEY
REGISTER OF DEEDS