

This instrument was
 Prepared by:
 Robert S. DeVane, Attorney
 413 E. Unaka Ave.
 Johnson City, TN. 37601

**DECLARATION OF PROTECTIVE
 AND RESTRICTIVE COVENANTS**

FOR

BARTON'S CREEK SUBDIVISION

THAT WHEREAS, WILSON AND TERRANERA, INC., hereinafter referred to as "Developer", hereby declares that it is the Owner and Developer of the following-described property known as Barton's Creek Subdivision, these Restrictions to include any and all Phases thereof as may be developed in the future, the use of which they propose to restrict by this instrument; and

WHEREAS, a map or plat of said subdivision is of record in the Register's Office for Washington County, Jonesborough, Tennessee, in Plat Book 19 at page 462, as well as any future Phases that may be recorded; and

WHEREAS, it is now desired and the intention and purpose for the benefit and protection of the Developer and the purchaser or purchasers of any lots in this subdivision, and in order to establish a sound value for the lots in this subdivision, to record these restrictions and easements so that they will be binding and enforceable and of public record. **NOTHING HEREIN CONTAINED SHALL, HOWEVER, BE CONSTRUED AS BEING APPLICABLE TO ANY OTHER PROPERTY OWNED BY WILSON AND TERRANERA, INC.**

NOW THEREFORE, in consideration of the premises and for the purposes herein set out, Developer binds itself, its heirs and assigns, and do hereby impose on the lots to said subdivision, as well as any future Phases which may be recorded hereinafter, as covenants running with the land, the following restrictive covenants.

1. LAND USE AND BUILDING TYPE: No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one single-family dwelling not to exceed two (2) stories in height, plus basement, and a private attached garage or carport for not more than three (3) cars. No mobile homes, trailers, or manufactured housing of any sort shall be used for residential purposes on any lot, either temporarily or permanently.

The rental of any dwelling located within the Subdivision will not be allowed without prior written approval of the Developer.

2. DWELLING SIZE AND QUALITY: The total living space area of any single-level main residential structure, exclusive of garages, basement, carports and porches, shall not be less than 1,500 square feet. The total living space area of any main residential structure, consisting of multiple levels, exclusive of garages, basement, carports and porches, shall be not less than 1,900 square feet. The minimum areas hereby required may be increased by provisions made in the individual deeds conveying any lot, and a reduction of five percent (5%) may be permitted upon written consent of Developer. In the event a Builder or Homeowner should construct a "Bonus Room" over the garage, the square footage of this "Bonus Room" shall not be included for purposes of determining the minimum required square feet.

Any dwelling constructed on any of said lots covered by this Declaration of Protective and Restrictive Covenants must be of high quality construction, both as to materials and workmanship; and no dwelling shall be constructed using exposed concrete blocks, and no dwelling shall be a total concrete block, wood frame or asbestos shingle construction. The foundation of any residence must be brick or stone veneer with no stucco, simulated brick or stone being used to cover the cinder block foundation. Any exterior stuccoed or dryvit type finish must be of such permanent quality as to reasonably assure that deterioration from weather and age could not result in subsequent exposure of the underlying concrete block or other material to which the stuccoed finish is applied. At least fifty (50%) percent of the front exterior surface must be brick, stone, vinyl siding, cement board, dryvit type finish or some combination(s) thereof. No exterior finish material shall be used on any dwelling except those materials specifically permitted herein, with "drawn brick" or any type of simulated brick or stone being specifically prohibited. No metal roofs shall be allowed other than standing seam roofs used solely for accent purposes. No log home or dwelling shall be constructed

on any lot. Provided, however, Developer may grant a variance of this exterior finish requirement, but shall not be required to do so, by giving its approval in writing prior to the commencement of construction. All plans for construction must be approved by Developer based on these guidelines, such approval to be exercised in the sole discretion of the Developer.

No detached garage may be constructed upon any lot.

3. BUILDING LOCATION: No building shall be located on any lot nearer to the front lot line or nearer to any other lot line than the minimum building setback lines as shown on the recorded plat of said subdivision heretofore referred to, or in compliance with any zoning ordinances and regulations of Johnson City, Tennessee, and any other governmental regulations now or hereafter applicable to said lots. For the purpose of this covenant, eaves, steps, and open porches shall not be considered as part of the building, but this exception shall not be construed to permit any portion of the building on a lot to encroach upon the lot of another.

4. DEVELOPER APPROVAL OF PLANS: No construction shall be commenced on any lot until the plans and specifications for such dwelling have been filed with and approved by the Developer or its duly designated representative. The plans and specifications must include a plot plan, elevation plan, a floor plan that shows the livable square footage of the residence, and a plan or schedule of the materials to be used for the exterior finish of the residence. Upon receipt of the plans and specifications, the Developer or its duly designated representative shall furnish to the lot owner in writing its approval for the commencement of construction or its denial of approval, all within thirty days from receipt of all documents as required herein. The Developer's approval shall not be unreasonably withheld, and if the plans and specifications have not been approved by the Developer or its designated agent within thirty days from receipt of the plans and specifications, there shall be a presumption that the Developer or its designated representative has approved said plans and specifications.

The Developer reserves the right to designate a person or entity to whom plans and specifications must be submitted for approval by recording in the office of the Register of Deeds for Washington County at Jonesborough, Tennessee a document designating the name and address of its representative for this purpose. Plans and specifications will be examined by the Developer or their designated representative for quality of materials, harmony of exterior design with existing structures, and location with respect to topography and finish grade elevation, together with the square footage requirement as contained herein.

Since the reason(s) for the approval or non-approval of the plans and specifications submitted to the Developer or its designated representative must be mostly subjective, no lot owner shall have a cause of action or any claim against the Developer or its designated representative for the disapproval of any plans and specifications unless the lot owner can prove malice in fact on the part of the Developer or its designated representative. The actions of the Developer or its designated representative shall not be subject to any claim of arbitrary or capricious actions, and the decision of the Developer or its designated representative shall be final unless any lot owner who is denied approval can prove malice in fact as the basis for the denial.

5. EASEMENTS: Easements for installation and maintenance of public utilities and drainage easements shall be and remain as shown on the recorded map heretofore referred to. Reservations for any additional easements not shown on said map may be specifically set out in the deed conveying any lot or lots to be affected thereby. Easements for natural drainage are reserved as natural drainage courses now exist, and no subsequent purchaser or owner shall obstruct any drainage course.

6. LIMITATION ON RE-SUBDIVIDING: After any lot or lots have been sold by the Developer, the same shall not be re-subdivided without Developer's prior written consent, except to form larger lots. Any re-subdividing, even with Developer's written consent, must also be approved by the Johnson City Planning Commission. The Developer may re-subdivide any lot or group of lots as shown on the map(s) heretofore referred to, subject only to the approval of any such re-subdividing by the Johnson City Planning Commission, and any re-subdividing may result in smaller or larger lots, or in additional lots being added by said Planning Commission approved map(s). All lots, however, created by any re-subdividing by the Developer will be subject to this Declaration of Protective and Restrictive Covenants, including the Developer's continuing right to re-subdivide any lot or group of lots while still owned by the Developer or subsequently reacquired by the Developer after having been initially sold to a third party.

7. TEMPORARY STRUCTURES: No structure of a temporary character, such as, but not limited to, trailers, modular or mobile homes (single or double-wide), storage buildings, basements, tents, shacks, garages, barns or other outbuildings, shall be placed or constructed on any lot at anytime as a residence, either temporarily or permanently, or as an accessory building used in conjunction with the dwelling constructed on any lot.

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

9. ANIMALS AND POULTRY: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose.

10. LIMITATION ON FENCING: No fencing shall be allowed on any lot which is not located totally behind the rear line of the principal dwelling located upon said lot; no fencing shall be higher than six (6) feet; and no chain link, barbed wire or metal fencing, or wood of any type shall be allowed. Prior to construction, the location, material, and design of any fence shall be approved by the Developer in writing. Additional fencing may be requested by any lot owner but such additional fencing must be approved in writing by either of the Developer.

11. COMPLETION OF CONSTRUCTION AND PAVED DRIVEWAYS: The dwelling constructed upon any lot must be totally complete, including landscaping, within one (1) year from the date of the commencement of construction. All driveways and walkways serving the residence constructed on any lot shall be paved, with concrete, brick or some combination thereof - asphalt being specifically prohibited. Provided, however, the completion of the paving of said driveways and walkways must be within a period of no more than six (6) months from the completion of the construction of the residence on any lot or the occupancy of said residence, whichever shall occur first.

12. GARBAGE AND REFUSE DISPOSAL: No lot shall be used as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers suitably sunken in the ground or otherwise adequately hidden from the eye. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

13. SIGNS: No sign of any kind shall be displayed to the public view of any lot except one professional sign of not more than one square foot. However, one sign of not more than five square feet advertising the property for rent or sale, or signs customarily used by a builder to advertise the property during the construction and sales period, may be displayed for a reasonable length of time.

14. OUTSIDE COMMUNICATION ANTENNAS PROHIBITED: No lot shall have placed thereon any equipment for the reception of television signals, radio signals, or other communication signals, including, without limitation, what are commonly called "satellite dishes", ham operator or citizens band radio operator antennas, etc. Provided, however, equipment kept totally inside any dwelling constructed on any lot shall be permissible, and "satellite dishes" that do not exceed thirty-six inches (36") in diameter that are located totally behind the rear line of the principal dwelling located upon any lot and that are not visible from the street upon which the house faces shall be permissible.

15. VEHICLES, PARKING AND STORAGE OF EQUIPMENT: No immobilized motor vehicle that is inoperative, and no motor vehicle without a valid current license plate registration shall be allowed to remain upon any lot or upon any street or road as shown on the map heretofore referred to. No motor homes, recreational vehicles, campers, boats, or trailers shall be stored on any lot unless same shall be located totally within the garage or carport located on said lot so that the same is not exposed or stored in any visible area. The number of recreational vehicles, campers, boats, or trailers stored on any lot shall not exceed two at any time. Further, no equipment, such as, but not limited to, construction equipment and farm equipment, shall be stored on any lot unless the same shall be located totally within the garage or carport located on any lot so that the same is not exposed or stored in any open area.

16. ABOVE-GROUND SWIMMING POOLS: No above-ground swimming pools shall be located or installed on any lot at any time.

17. PERMANENT MAILBOXES: Before any residential structure is occupied, a permanent mailbox must be constructed at the entrance of the driveway connecting the house with the street, this mailbox being available at American Lighting, #MB90.

18. YARD ART: Outdoor landscaping of a permanent or seasonal nature shall be approved by the Developer prior to installation thereof, such approval to not be arbitrarily or unreasonably withheld.

19. MOWING REQUIRED: All lots, whether improved or unimproved, must be mowed on a regular basis. The mowing and maintenance of all lots shall be to a level commonly and customarily maintained for a lot where a single-family residence exists, even though no residence

has been built thereon. Provided, however, the requirement of this section shall apply only to that part of any lot that is seeded or cultivated for grass. Any part of a lot that remains in its natural state shall be kept and maintained so as not to be in violation of Paragraph Eight (8) herein.

20. UTILITIES: All utilities serving the residence constructed on any lot, including, without limitation, electricity, natural gas, telephone, television cable, etc., shall be placed underground.

21. TERM: These covenants are to run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time such covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part. PROVIDED, HOWEVER, nothing in this Paragraph shall be construed to modify, change, or reduce the effect of the provisions of Paragraph Twenty-two (22) herein.

22. RIGHT TO MODIFY AND/OR RELEASE: Any restrictive covenants as herein contained, except as to the provisions of Paragraph One (1) hereof, may be modified and/or released as to any lot by a recorded Amendment to this Declaration of Protective and Restrictive Covenants signed by the Developer, so long as the Developer remain the owner of any lot or lots to be affected by the Amendment. In the event that a lot has been conveyed by the Developer, the then owner of such lot shall have the right to modify and/or release any restrictive covenants as herein contained, except as to the provisions of Paragraph One (1) hereof, by a recorded Amendment to this Declaration of Protective and Restrictive Covenants which shall be signed by (a) the Developer, if it still owns any lot(s) shown on the map above referred to, (b) the owner(s) of any lot to be affected by the Amendment. and (c) the owner(s) of all "Contiguous Lot(s)" to the lot to be affected. If any of the lots contiguous to the lots) to be affected by the Amendment is owned by the owners) of the lot(s) to be affected, contiguous Lot(s) shall mean the lot(s) contiguous to any lot(s) in the same block owned by the owner(s) of the lot(s) to be affected by the Amendment. The Amendment shall specifically identify the lot number and the owner(s) of the lot to be affected as well as the owner(s) of all Contiguous Lots by specific reference to the lot number(s) of the Contiguous Lots. The rights as herein reserved, both by the Developer and on behalf of any subsequent lot owner, to amend this Declaration of Protective and Restrictive Covenants shall not require the consent of any mortgagee of any lot in this subdivision, and as to the right herein reserved by the Developer, shall not require the consent of the owner of any other lot, and as to the right to amend reserved to any subsequent lot owner, no additional owner of any lot shall be required to join in any Amendment except Contiguous Lot owners and the Developer, if they own any lot(s) shown on the map above referred to.

23. MINIMUM REQUIREMENTS: The restrictions as herein contained are minimum requirements only and shall not prevent Developer or any subsequent owner of any lot from imposing additional restrictions.

24. ENFORCEMENT: Enforcement shall be by proceedings at law or in equity against any persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. Any such proceeding may be instituted by any person or persons who at the time thereof own any lot in this subdivision.

25. SEVERABILITY: Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions, all of which shall remain in full force and effect.

IN WITNESS WHEREOF, this Declaration has been executed by Developer on this the 30 day of October, 2006

WILSON AND TERRANERA, INC.

BY: 
 JOE WILSON, PRESIDENT

ATTEST

BY: 
 JOE TERRANERA, SECRETARY

STATE OF TENNESSEE
COUNTY OF WASHINGTON

Before me, a Notary Public in and for said State and County, personally appeared **JOE WILSON** with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), who upon oath, acknowledged himself to be **PRESIDENT** of **WILSON AND TERRANERA, INC.** the within named bargainor, and that he as such **PRESIDENT**, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of **WILSON AND TERRANERA, INC.** by himself as **PRESIDENT**.

Witness my hand and seal on this the 30 day of October, 2006

Sondra L. Berry
Notary Public

My commission expires:

1-24-2009



STATE OF TENNESSEE
COUNTY OF WASHINGTON

Before me, a Notary Public in and for said State and County, personally appeared **JOE TERRANERA**, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), who upon oath, acknowledged himself to be the **SECRETARY** of **WILSON AND TERRANERA, INC.** the within named bargainor, 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 **WILSON AND TERRANERA, INC.** by himself as **SECRETARY**.

Witness my hand and seal on this the 30 day of October, 2006

Sondra L. Berry
Notary Public

My commission expires:

1-24-2009



State of Tennessee, County of WASHINGTON
Received for record the 31 day of
OCTOBER 2006 at 9:15 AM. (REC# 431270)
Recorded in official records
film Roll 525 Image 2096-2090
State Tax \$.00 Clerks Fee \$.00,
Recording \$ 27.00, Total \$ 27.00,
Register of Deeds GINGER B. JILTON
Deputy Register LISA STAFFORD