

THIS INSTRUMENT PREPARED BY AND RETURN TO:
EVANS PETREE PC
1000 RIDGEWAY LOOP ROAD, SUITE 200
MEMPHIS, TENNESSEE 38120

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ALLELON HOMEOWNERS ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (“Declaration”), made on this ____ day of _____, 20____, by *Boyle Investment Company*, a Tennessee corporation, hereinafter referred to as “Declarant”.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Shelby County, Tennessee, which consists of fifty (50) Lots and is more particularly described in Exhibit “A” attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, Declarant will sell and convey the said Property subject to certain protective covenants, conditions, restrictions, reservations, liens, easements and charges as hereinafter set forth; and

WHEREAS, Declarant has deemed it desirable to create an association to which should be delegated and assigned the powers of maintaining, administering and enforcing the covenants, conditions and restrictions and collecting and disbursing the assessments and charges hereinafter created for the efficient preservation and maintenance of the values and amenities of the Property; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Tennessee as a non-profit, non-stock corporation, Allelon Homeowners Association, Inc., for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, reservations, liens and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions, reservations, liens and conditions shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each Owner thereof.

ARTICLE I: DEFINITIONS

Section 1. “Assessment” shall mean any regular assessments, Fines, fees or charges, any special assessments, any emergency assessments, and any other fees or charges fixed, established, and collected by the Declarant and/or the Association from time to time as hereinafter provided.

Section 2. “Association” shall mean and refer to the Allelon Homeowners Association, Inc., its successors and assigns. The Association’s Charter is filed with the Tennessee Secretary of State.

Section 3. “Board of Directors” shall mean and refer to the Board of Directors of the Association.

Section 4. “Common Area” shall mean the C.O.S. area shown as C.O.S. A, C.O.S. B, C.O.S. C, C.O.S. D, and C.O.S. E on the Plat and any and all other real property (including the Improvements thereto) owned by the Association (or by Declarant prior to conveyance of the Common Area to the Association) or declared for the common use and enjoyment of the Members of the Association, its respective guests and invitees by the Declarant and/or Association. The Common Area to be owned by the Association originally shall be all of the Property (including any additions thereto) not included in the legal description of the Lots, including, without limitation, McVay Road right of way.

Section 5. “Declarant” shall mean and refer to Boyle Investment Company, a Tennessee corporation, or the duly appointed agent or representative, successors and assigns of Declarant to whom Declarant assigns its responsibilities hereunder.

Section 6. “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions, together with any supplement or amendment hereto recorded in the Register’s Office.

Section 7. “Improvements” shall mean the structures, walls, retaining walls, stone or other columns or decorative features, entry features, fencing including the Entry Fence (hereinafter defined), gates and all systems related thereto, lighting, irrigation systems, pavements, landscaping and other plantings, drainage, detention and all inlets, pipes and other systems related thereto, temporary or auxiliary structures, signage, and other additions built or placed on the Lots or Common Area. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within said Lot. 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 Lot lies outside that Lot, then the Association may establish an easement of use which shall apply thereto in favor of the Lot on which the Improvements were intended.

Section 8. “Lot” shall mean and refer to one of the Lots as shown on the Final Plan and to the Lots on any Additional Property and the Improvements on said Lots, reference being made to the Warranty Deeds conveying individual Lots for an exact description of said Lots.

Section 9. “Member” shall mean and refer to every person or entity who holds membership in the Association and shall include the Declarant so long as it retains ownership of any Lots in the Property.

Section 10. “Owner” shall mean and refer to the record Owner, whether one or more persons or entities of a fee simple title to any Lot, including Declarant to the extent it owns any Lots, but excluding

those having such interest merely as security for the performance of an obligation (“the Mortgagee”), provided that if the Mortgagee shall succeed to title to a Lot, then the Mortgagee shall be an Owner for purposes hereof.

Section 11. “Person” means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 12. “Plat”, “Final Plat” or “Final Plan” shall mean the plat for Allelon Planned Development, and any amendments or modifications thereto, to include the Property and any Additional Property, to be recorded in the Register’s Office of Shelby County, Tennessee, as amended from time to time.

Section 13. “Property” shall mean and refer to that certain real property shown on that certain plat attached hereto as Exhibit “A”. Hereafter, at its election and in its sole discretion, the Declarant may, by the filing of an amendment hereto signed by Declarant and filed in the Register’s Office, add or annex additional real property which is contiguous to the Property and bring additional property within the jurisdiction of the Association and subject to this Declaration, which additional real property may already be developed or to be developed as residential property (the “Additional Property”).

Section 15. “Rules and Regulations” shall mean and refer to the rules, regulations and restrictions pertaining to the Property and Common Area that may be adopted by the Association and/or Declarant from time to time.

ARTICLE II: MEMBERSHIP

Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an ownership interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

Declarant shall become and remain a member of the Association upon the recording of this Declaration in the Register’s Office of Shelby County, Tennessee. At such time as Declarant conveys a Lot, Declarant shall cease to be a member of the Association with respect to such Lot, thus relieving the Declarant of any liability or obligation to the Association for such Lot.

ARTICLE III: VOTING RIGHTS

Section 1. Voting Rights. The voting rights of the Owners shall be appurtenant to the ownership of a Lot, each Owner of a Lot being entitled to one (1) vote for each Lot owned, except the Declarant, which shall be entitled to the greater of (i) one hundred (100) votes or (ii) three (3) votes for each Lot owned by it. Declarant shall maintain such voting rights until the later of (a) the date upon which Declarant expressly relinquishes and conveys control of the Association to the Owners or (b) such date as a primary residence has been constructed on each Lot contained within the Property.

The Declarant’s votes may be reduced to one (1) vote per Lot owned by Declarant if and when the

Declarant decides, in its sole subjective discretion, to reduce its outstanding votes to one (1) vote per Lot owned by Declarant.

It is the intent of the Declarant that it shall maintain control of the Association until such time as there is a primary residence constructed on each Lot or until such time as Declarant has been released from all bonds posted with the City of Memphis, the City of Germantown and/or MLG&W and no longer owns any Lots within the Property, whichever is later to occur.

Section 2. Proxies. An Owner may appoint the Declarant or any other person permitted by law or by the Bylaws as his proxy. Declarant may cast votes by an unlimited amount of proxies, but an Owner other than Declarant may only cast one vote by proxy. Any proxy must be in writing and must comply with all requirements imposed by law or by the Association's Bylaws.

Section 3. Commencement of Meetings, Voting, Quorum and Notice Requirements. Declarant shall determine, in its sole and absolute discretion, when to commence conducting meetings of the Association or in all events, meetings of the Association shall commence when Declarant expressly relinquishes and conveys control of the Association to the Owners or such date as each Lot has a primary residence constructed thereon, whichever is later to occur. Once meetings of the Association commence, the presence, either in person or by proxy, of at least fifty-one percent (51%) of the total votes entitled to be cast with respect to any question, shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of the Association. If the number of votes eligible to be cast drops below the quorum, and the question of a lack of quorum is raised, no business may thereafter be transacted. 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, the Charter, 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 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 delinquent in any payment due the Association.

Section 4. Authority of the Association. In addition to the powers and authority granted to it by its charter, bylaws or this Declaration, and without limiting the generality thereof, the Association shall have the authority to operate, maintain or otherwise manage or provide for the operation, maintenance or management of the Common Areas which, as noted above, includes McVay Road right of way. Such authority shall include, but not be limited to, mowing, pruning, fertilizing, preservation, and replacement of the landscaping and the upkeep and maintenance of sprinklers, irrigation mains and laterals, sprinkler heads, equipment, water pumps, drainage areas, retaining walls, lakes, dams, private roads, gates, openers, pedestrian circulation system, perimeter landscape buffers, signs, lighting, fencing, pavers, planting boxes and other landscape amenities and improvements, if any, comprising or located on the Common Areas.

Section 5. Powers and Authority of the Association. The Association shall have all the powers of a non-profit corporation organized under the laws of the State of Tennessee, subject only to such limitations upon the exercise of such powers as are expressly set forth in the charter, the bylaws, or this Declaration. It shall have the power to do any and all lawful things that may be authorized, required or permitted to be done by the Association under this Declaration, the charter, and the bylaws, and to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation:

(A) To levy and collect Assessments on the Lot and/or Owners of Lots and to enforce payment of such Assessments, all in accordance with this Declaration;

(B) To enter into contracts with Lots and/or Owners of Lots to provide landscape maintenance services to such Owners;

(C) To make reasonable Rules and Regulations for the operation of the Common Areas as specified herein and to amend them from time to time, provided that any Rule or Regulation may be amended or repealed by an instrument in writing signed by the majority of the total eligible votes of the membership of the Association;

(D) To enter into agreements or contracts with insurance companies with respect to insurance coverage for the benefit of the Association;

(E) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters;

(F) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;

(G) To enter into contracts, to maintain one or more bank accounts, and generally, to have all of the powers necessary or incidental to the operation and management of the Association;

(H) To sue or defend in any court, administrative agency or other tribunal on behalf of the Association and its members;

(I) To provide adequate reserves for repairs and replacements;

(J) To adjust the amount collected and use any insurance proceeds to repair damaged or replace lost property; and, if proceeds are insufficient to repair damaged or replace lost property, to assess the members in proportionate amounts to cover the deficiency;

(K) To suspend the voting rights of a Member for any period during which any Assessment against such Member's Lot remains unpaid;

(L) To employ a manager or firm to manage the affairs and property of the Association (which may include the Declarant or an affiliate of Declarant), to employ independent contractors or such

other employees as it may deem necessary (which may include the Declarant or an affiliate of Declarant), and to prescribe their duties and to set their compensation;

(M) To retain the services of legal and accounting firms;

(N) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation of such provisions or rules;

(O) To contract with any Owner (including without limitation the Declarant) for performance, on behalf of the Association, of services the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interests of the Association;

(P) To levy and collect Fines for violations of this Declaration and to enforce payment of such Fines, all in accordance with this Declaration;

(Q) To charge and collect fees for services rendered by the Association, the Architectural Committee and their respective agents; and

(R) To take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder, for the operational protection of the Association or for the enforcement of this Declaration.

ARTICLE IV. PROPERTY, FENCES AND DRAINAGE

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

Section 2. Common Area. The Property has a natural park-like wooded atmosphere. This natural, wooded atmosphere will be preserved to the extent possible in the Common Areas.

Section 3. Roads. All roads and all curb and gutter within the Property are, and shall remain, private and have not been dedicated to the City of Memphis, the City of Germantown or any other governmental body. By remaining private, the responsibility for payment of maintenance and repair expenses for said roads, curb and gutter shall remain the responsibility of the individual Lot Owners, and be paid for by the Owners through the assessments levied by the Association as provided herein. The Association shall be responsible for the maintenance and repair of the roads, curb and gutters.

A perpetual easement is hereby granted to the Declarant, the Association, its officers, agents, employees, and to any construction or management company selected by the Declarant or Association to enter into or to cross over the Common Areas and the Lots to the extent necessary to perform the duties of maintenance and repair to the roads, curbs and gutters.

Section 4. Storm Drainage and Detention. A detention pond shall be located on COS A or such other location deemed necessary by the Declarant or the Association. The detention pond shall hold water at all times. If desired by Declarant or the Association, a fountain or other Improvement, may be installed in such detention pond, but no such fountain or Improvement is required. If desired by Declarant or required by applicable governing authority, Declarant can establish additional or alternate detention serving the Property, which may be on-site or located on and used in connection with surrounding developments. The Declarant makes no warranty concerning the degree of water inundation that may result on the Lots. Any and all storm drainage, including all pipes and inlets labeled private on the Final Plat, and detention serving the Property and any and all property providing access thereto shall be deemed Common Area for the purposes of this Declaration and shall be maintained by the Association. The costs of maintaining said storm drainage and detention and access area(s) as well as the maintenance, repair and replacement of any and all Improvements associated with said storm drainage and detention shall be included as part of the regular Assessments charged to the Owners hereunder. The storm drainage established for the Property, including the detention pond and any and all Improvement's related thereto are, and shall remain, private and have not been dedicated to any other governmental body. By remaining private, the responsibility for payment of maintenance and repair expenses for said storm drainage, detention pond, Improvements and surrounding area shall remain the responsibility of the individual Lot Owners, and be paid for by the Owners through the assessments levied by the Association as provided herein. The Association shall be responsible for the maintenance and repair of the private storm drainage system established for the Property, including without limitation, the detention pond, Improvements and surrounding area. Notwithstanding anything herein to the contrary, this paragraph shall not apply to those easements designated as "public" easements, if any, on the Plat. A perpetual easement is hereby granted to the Declarant, the Association, its officers, agents, employees, and to any construction or management company selected by the Declarant or Association to enter into or to cross over the Common Areas and the Lots to the extent necessary to perform the duties of maintenance and repair to the drainage, detention and all systems related thereto.

Section 5. Sidewalks. Each Owner of the Lots identified on the Final Plat required to install a sidewalk on their Lot shall install a sidewalk, consistent with the standards and requirements of applicable governing authorities and applicable design guidelines, along each required boundary including, without limitation, all ADA accessible ramps and other elements required by the City of Germantown. Such sidewalk(s) shall be installed by the Owner, at the Owner's expense, simultaneously with the construction of a residence on such Lot and prior to occupancy. Notwithstanding the foregoing, in all events, the Owner shall install the required sidewalk(s) within ten (10) months after the final lift of the surface asphalt is installed on the roads within the Property. If an Owner fails to install the required sidewalk(s), in addition to any and all other remedies provided for hereunder including without limitation Fines and lien rights, the Declarant and/or the Association shall have the right, but not the obligation, to install said sidewalk(s) and the costs of such installation shall be reimbursed by the applicable Owner on demand and shall be a lien against the Owner's Lot.

Declarant shall install a sidewalk within the boundaries of the Common Area identified as C.O.S. A on the Plat.

The sidewalks, once installed, shall be private sidewalks. An easement is hereby established, reserved and

granted to Declarant, Association and the Owners of the Lots only for full use of the sidewalks located on the Property. By remaining private, the responsibility for payment of maintenance and repair expenses for said sidewalks shall remain the responsibility of the individual Lot Owners and be paid for by the Owners through the assessments levied by the Association as provided herein. The Association shall be responsible for the maintenance and repair of the roads, curb and gutters. A perpetual easement is hereby granted to the Declarant, the Association, its officers, agents, employees, and to any construction or management company selected by the Declarant or Association to enter into or to cross over the Common Areas and the Lots to the extent necessary to perform the duties of maintenance and repair to the sidewalks.

Section 6. Fences.

(a) Gated entrances and possible related fencing shall be installed by the Declarant which will provide entry into the Property (collectively, "Entry Fence"). The Entry Fence shall have one (1) or more signs to indicate "Allelon" name. The Entry Fence gate shall be operated by an electronic system. The Association shall be responsible for the continued maintenance of the Entry Fence. The costs and expense associated therewith may be reallocated and assessed to all Owners as a common expense. A perpetual easement is hereby granted to the Declarant, the Association, its officers, agents, employees, and to any construction or management company selected by the Declarant or Association to enter into or to cross over the Common Areas and the Lots to the extent necessary to perform the duties of maintenance and repair to the Entry Fence and all systems related thereto.

(b) Declarant or the Association, in their sole and absolute discretion, may, but shall not be obligated to, install additional fences by along the exterior boundaries of the Property ("Other Fences"). The Other Fences, if any, will be installed by Declarant. The Declarant shall be responsible for the installation of the Other Fences, where Declarant deems necessary or desirable. Continued maintenance of the Other Fences, once installed, shall be the responsibility of the Association. The costs and expense associated therewith may be allocated and assessed to all Owners by the Association as an assessment. A perpetual easement is hereby granted to the Declarant, and to any construction or management company selected by the Declarant and/or the Association to enter in or to cross over the Common Areas and any Lot to install the Other Fences. In addition, a perpetual easement is hereby granted to the Association, its officers, agents, employees and to any construction or management company selected by the Association to enter into or to cross over any Common Areas and all Lots upon which the Other Fences are located in order to perform the duties of maintenance and repair to the Other Fences.

ARTICLE V: PROPERTY RIGHTS AND EASEMENTS

Section 1. Owner's Easement of Enjoyment of Common Area. Every Owner shall have a right and easement of enjoyment in and to the Common Area, each Owner's easement being appurtenant to and passing with the title to each Lot. Such easements shall be subject to such rules, regulations, rights and restrictions of use as may be established from time to time by the Association, including but not limited to, the following provisions:

A. The right of the Association to limit the number of guests of Members in the use of the Common Area.

B. The right of the Association to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to have the Common Area mortgaged by the Association.

C. The right of the Association to have all or any part of the Common Area dedicated or transferred by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Association.

D. The right of the Association to suspend this right and easement of enjoyment and to fine a Member for any period during which any assessment against his Lot is delinquent, or during which a Member is in violation of published Rules and Regulations adopted by the Association.

E. The right of the Association to adopt Rules and Regulations pertaining to the Common Area for the benefit of the Owners.

Section 2. Delegation of Use. Any Member may delegate in accordance with the Bylaws, his right of enjoyment to the Common Area facilities to guests or the members of his family, all of whom must reside on the Property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association prior to or simultaneously with the conveyance of the last Lot on the Property.

Section 4. Easements. The Declarant shall have the right from time to time to declare, grant and convey utility, telephone, and other easements for the benefit of the Association and Owners over, under, and across the Lots and Common Area.

Section 5. Easements for Utilities and Related Purposes. The Property is conveyed subject to the easements and all other matters shown on the Plat. The Declarant and the Association are each independently authorized and empowered to grant such additional licenses, easements and/or rights-of-way for sewer lines, water lines, electrical cables, telephone cables, television and other communication cables, internal and external wiring and antennae, gas lines, storm drains, underground conduits and/or equipment for such purposes related to the provision of public utilities and other common services to the Property or any Lot(s) as may be considered necessary, appropriate or desirable by the Board or the Declarant for the preservation of the health, safety, convenience and/or welfare of the Owners and the Declarant.

Section 6. General Easement. The Declarant reserves the right and easement to the Common Area and any Lot or portion thereof as may be needed for repair, maintenance, inspection, construction, or marketing of Property Improvements, including the removal of trees on such Lot or any other Lot in the Common Area.

Section 7. Additional Property. As set forth above, Declarant shall have the right to bring Additional Property into the Association and subject it to this Declaration. The Additional Property may be owned by the Declarant or by others. As to any Additional Property, whether owned by the Declarant or others, which Declarant desires to bring into the Association and subject it to this Declaration, the Association, its members, and all present or future owners, their mortgagees, successors, and assigns, hereby waive and relinquish any rights to object to or protest against the subdivision of any Additional Property as may be

required for such Additional Property. The provisions of this Section shall not be strictly construed, but shall be broadly and liberally construed for the benefit of the Declarant and the Additional Property so as to allow the Declarant to bring Additional Property into the Association and subject it to this Declaration, including but not limited to the subdivision thereof.

ARTICLE VI: CONTROL OF IMPROVEMENTS

Section 1. Control of Improvements.

No Improvement or change, including, but not limited to, the construction or erection of any structure or residence, alteration to the exterior of any structure or residence, terrain change, fence, walls, driveway, walkway, landscape screening, mailbox, outdoor lighting fixture, any sanitary and/or storm sewer system, underground wiring, swimming pool, pool deck, or the removal of any existing tree or trees which are eight inches (two inches for evergreens) in caliper or larger when measured at a point two feet above the ground, shall be commenced, erected, placed or permitted on any Lot until the plans, specifications, specific location (including elevation), size and dimensions of said Improvement or change has been approved in writing, or the requirement for such approval has been waived in writing by the Architectural Committee. The Architectural Committee may establish differing design guidelines for Improvements within various phases of the Development. Architectural Committee members shall be selected by Declarant and such members serve at the pleasure of the Declarant until such time as Declarant expressly relinquishes and conveys control of the Association to the Owners, or until such date each Lot has a primary residence constructed thereon, whichever is later to occur. In the event that the Architectural Committee fails to approve or disapprove such design or location within thirty (30) days after said complete plans and specifications have been received by it, the approval will not be required, and this Section will be deemed to have been fully complied with. The Architectural Committee reserves the right to require the submission of designs, material selections and layouts of proposed Improvements or changes at different stages of the design process, and further reserves the right to specify the information required therein as well as the format thereof. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Committee, but, in any event, shall include (i) A site plan of the Lot showing the overall nature and location of all improvements, including front, sides, and rear setbacks of all structures; fences, gates or barriers, and location of driveway, turn-arounds, parking spaces, utility meters, air conditioning equipment, refuse storage, and screening, (ii) grading, drainage, irrigation and landscaping plans for the particular Lot, (iii) the design, material and location of mailboxes, which shall be in strict accordance with the approved mailbox for the Property; (iv) evidence that a sprinkler system shall be installed within the residence to be constructed on the Lot in accordance with the requirements and ordinances of all applicable governing authorities (vi) Architectural plans which include floor plans, all exterior elevations, building sections and details of cornice, dormers, front entrance, porches, rails, and other details, etc. of special or unique importance or character. Said plans shall include adequate data and detail as to the overall kind, style, shape, height, materials, color scheme, and quality of the proposed structure and other improvements.

Before such plans, specifications and design as required in this Section shall be submitted for approval, same must be prepared by a professional architect currently approved by the Architectural Committee, and in the case of site Improvements, by a professional landscape architect approved by the Architectural Committee and who is a graduate of a school of landscape architecture accredited with the American Society of Landscape Architects. Said submittal shall include an architectural review fee set from time to time by the Architectural Committee to cover the costs of review and inspection. If the plans and

specifications are prepared by architects approved by the Architectural Committee, the review fee may be waived.

Any Owner constructing a residence may only proceed with his or her construction according to the plans specifications and design approved by the Architectural Committee in writing.

If any Improvement or change requiring approval shall be undertaken on a Lot, and said approval has not been obtained from the Architectural Committee, or if any Improvement or change which is not in conformance with approved plans and specifications shall be undertaken on a Lot, said Improvement or change shall be deemed to have been undertaken in violation of these covenants; and, upon written notice of the Architectural Committee, any such Improvement or change deemed to be in violation shall be removed or altered so as to extinguish such violation. If, thirty (30) days after the notice of such violation, the Owner or Owners of such Lot in question shall not have taken reasonable steps toward the removal or alteration of the same, Declarant, its representative, or the Architectural Committee shall have the right to Fine the Owner, and pursue specific performance of this obligation by Owner, by injunction or otherwise, and/or through its agent, to enter said Lot and to take such steps as may be necessary to extinguish such violation. All costs, the Fine, expenses, and attorney fees pertaining thereto shall be a binding obligation of the Owner as well as a lien on the Lot in question, upon the recording of such with the Register's Office of Shelby County, Tennessee. Any lien so recorded shall be subordinate to the lien of any existing mortgage or deed of trust. Any agent of the Declarant or the Architectural Committee may, at reasonable times, enter upon and inspect any Lot and Improvements thereon for the purposes of ascertaining whether the maintenance of such Lot, and the maintenance, construction or alteration of structures 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 act by such entry or inspection.

For the purpose of ensuring the development of the Lots as an area of high standards, and to ensure reasonable compatibility of architectural designs, Declarant and the Architectural Committee shall have the power to control all Improvements as set forth in this Article, as well as to make such exceptions to these covenants, and to waive particular violations as either shall deem necessary, appropriate, or proper.

Section 2. Landscape Treatment of Street and Other Common Areas. The nature and extent of landscaping of streets and other Common Areas shall be determined by Declarant initially. However, it is hereby established that each Owner, at said Owner's expense, shall install on its Lot, prior to occupancy, a minimum of two (2) large deciduous shade trees in the front yards along all streets three (3), or more, may be required on corner and large frontage Lots to establish a tree canopy over the roads within the Property.

Section 3. Compliance with Building Codes. The applicable building codes in effect at the time of any construction shall apply to all construction.

Section 4. Non-Liability. Neither Declarant nor the Architectural Committee nor any employee, owner, architect, consultant or agent thereof shall be responsible or liable in any way regarding any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

Section 5. More Restrictive Architectural Control. Declarant and/or the Association, through the Architectural Committee, shall have the right to impose more or greater restrictions on its control over

Improvements and landscaping within the Property through the Design Guidelines, as may be established and amended from time to time.

ARTICLE VII: PROVISIONS REGARDING BUILDERS

Section 1. Restriction of Builders. The Association and/or the Declarant shall have the right to prohibit certain builders from constructing residences on any Lot, based upon past problems with respect to such builder, which can include, without limitation, the constructing of unapproved field modifications, inadequate response to Architectural Committee directions, and/or failure to comply with Architectural Committee requirements.

Section 2. Construction Debris and Trash Removal. Each builder will be required to maintain a dumpster in a location approved by the Architectural Committee. This dumpster shall be emptied periodically, but prior to the point that construction materials reach the upper rim. The required dumpster may be shared between adjoining two builders and/or Owners, if said builders and Owners agree, and each shall be bound by the conditions noted herein.

The builder will ensure that erosion control fencing and other measures are re-erected immediately after emptying the dumpster and any mud/dirt is immediately cleared from the streets. Streets adjacent to said property shall be kept open for circulation at all times and free from mud, dirt and other debris. Any mud, dirt or other debris that remains on any street or service drive for more than twenty-four (24) hours shall be considered a violation hereunder and subject to Fine. This is for the protection of all parties and to allow emergency vehicles direct access to any part within the Property. Each Owner, by ownership of a Lot, acknowledges that regular mandated inspections of erosion control measures shall be conducted from time to time. The Association shall have the right to hire a third-party contractor to review the regular inspection reports and perform any and all necessary repairs or clean up, implement necessary erosion control measures or otherwise perform the necessary maintenance to the Lot(s), roads or common areas within the Development required per such inspection reports. By acceptance of a deed of a Lot, Owner agrees that, during the construction of the residence and until their site is fully stabilized, such Owner(s) shall pay their prorata share of the costs associated with the regular mandated inspections and maintenance of all erosion control measures and required clean-up of sediment from the storm water drainage system and roadways. These costs will be billed monthly through the Association, and all remedies shall be available to the Association, including without limitation, lien rights, fines, etc. in the event an Owner fail to pay its share of costs of as set forth in this Section.

All construction sites are to be cleaned on a regular basis so as to facilitate a pleasing appearance to Owners and visitors and to eliminate any hazards for the visitors who will be touring through the various construction projects.

Violations will be subject to Fines and the Association also may have the violating site cleaned. The Owner will be charged two times the direct cost charged for the site clean-up.

Construction materials including without limitation, nails and other metal objects that may cause flat tires or similar property damage for new or prospective Owners, shall be kept out of the public right-of-way at all times and stored on the subject property. All wrappers, paper goods and light-

weight building materials that may be blown onto adjacent properties shall be maintained, properly stored or deposited in trash receptacles on as needed basis.

Workers shall not utilize Common Areas for parking, lunch or breaks and shall remove all food wrappers, containers, etc., and deposit said debris in trash receptacles.

Section 3. Infrastructure. Within the Property, there are numerous forms of common infrastructure that may consist of streets, landscaping, street trees, street lights, sidewalks, irrigation systems, brick pads, walking paths, retaining walls, detention areas, trash receptacles, etc., as well as other Improvements not necessarily enumerated above. The builder and Owner of any Lot are responsible for protecting said infrastructure.

Damage to any infrastructure item will be repaired by the Association and back-charged to the Owner responsible at two times the direct cost and the Owner also may be fined.

Prior to commencing construction, the Owner must take protective measures approved by the Association, which at a minimum shall include fencing around street trees adjacent to or within the subject site. All construction materials are to be kept away from these trees during construction so as to prevent any damage. These trees are a valuable asset to each Lot as well as the overall subdivision.

Section 4. Construction Time. No builder or subcontractor shall commence construction work prior to or after the published time periods established for construction by the City of Germantown . If any construction is performed beyond the hours established by the City of Germantown, the Owner(s) effected by the violation shall be solely responsible for contacting the City of Germantown for remedy regarding the claimed violation.

Section 5. Construction Audio Equipment and Noises. No audio equipment (iPods, iPads, mp3, radios, tape decks, C.D. players) shall be utilized on construction sites in a manner which disturbs nearby residents at any time. Offensive language or other potentially offensive noise (other than typical construction machinery or procedures) is strictly prohibited.

Section 6. Concrete Delivery and Disposal of Excess Material. Concrete trucks are strictly prohibited from dumping any excess concrete anywhere within the Common Areas and should only wash out on the Owner's Lot or in any designated wash out areas. Concrete which is accidentally spilled on sidewalks, or asphalt paving must be removed by the responsible party immediately.

Section 7. Surveys and Construction Staking. Each builder and Owner is responsible for establishing property corners and construction staking. No tolerance will be allowed for improperly locating property lines or proposed Improvements. An experienced and qualified licensed engineer is required to survey the property and locate proposed Improvements. The location of proposed Improvements shall be double-checked prior to starting actual construction. Any questions or problems in the field shall be immediately reported to the managing agent of the Association. Once the foundation is laid, the contractor's engineer shall certify that all Improvements are properly located. Any and all deviations shall be promptly corrected at that time. No exceptions will be allowed.

Section 8. Dump Sites. There are no dump sites within the Property. All construction refuse and debris removed from the premises during and upon completion of construction shall be properly disposed of, outside of the boundaries of the Property.

A minimum Fine of Five Thousand Dollars (\$5,000.00) per occurrence shall be imposed on anyone dumping debris on any portion of the Property. This Fine shall accrue to the Lot from which the debris originated and a lien shall be filed on said Lot. The workman and company responsible for depositing such debris shall be prohibited from future work in the Property. The Owner responsible shall be fined, as well.

Section 9. Protection of Adjacent Property. Unless modified in writing, prior to construction to beginning on a Lot, the contractor is required to put up a solid black silt fence along the entire property line separating the proposed construction site from adjoining downstream properties. This fence shall be maintained by the builder throughout construction and every effort must be made to keep any silt, mud or construction debris off of the adjacent property. The contractor shall not utilize the adjoining property in any manner unless prior approval and conditions have been granted by the adjacent property Owner.

Section 10. Port-A-John. Each builder is responsible for his own Port-A-John or for making arrangements with nearby builders to share a unit between several construction sites. The Port-A-John shall be maintained on a regular basis and in a location acceptable to the Architectural committee.

ARTICLE VIII: PROPERTY MAINTENANCE

Section 1. General Maintenance. The Association shall generally provide for the maintenance of all Common Area and right of ways as required, and any Improvements thereon. The Association shall establish a budget and assessments for such expenditures and the disbursement and application of such Assessments.

The Association shall make necessary arrangements to maintain the Common Area on said plat and maintain and replace the Improvements on the Common Area including any walls, pedestrian ways, ancillary structures and drainage facilities serving the Property, and to pay taxes and all other necessary expenses, including all types of liability insurance in connection with ownership of said common areas, which shall be paid by the Association through the Assessments.

Each Owner shall be responsible for the interior and exterior maintenance of his Lot and Improvements, including, but not limited to, all exterior walls of dwellings, doors, windows, roofs, patios, garages, light fixtures, irrigation systems, parking surfaces, landscaping, driveways, painting, plumbing and electrical repairs. In the event an Owner of any Lot shall fail to maintain his or her Lot and the Improvements thereon in a manner reasonably satisfactory to the Association, and/or in keeping with other Lots, the Association shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the Improvements erected thereon. The cost of such repair, maintenance and restoration shall be added to and become part of the Assessment of that Lot. Additionally, each Owner shall be responsible for the maintenance and repair of the curb adjoining the private right-of-way which is contiguous to the Owner's Lot. The cost of said maintenance, expenses and attorneys fees shall be a binding obligation of the owner as well as a lien on the Lot in question, upon recording of such notice with the Register's Office of Shelby County, Tennessee. Any lien so recorded shall

at all times be subordinate to any prior recorded deed of trust. In addition to the costs as set forth herein, the Owner shall be responsible for all court costs, reasonable attorneys' fees, and interest from the date of any expenditure at the maximum legal rate of interest.

Section 2. Damaged or Destroyed Residence. The right is given to the Association to require the Owner of a damaged or destroyed residence on any Lot to make repairs or replacements in order to restore the residence to its condition prior to the damage or destruction, including the right to require that insurance proceeds paid to the Owner, because of said damage or destruction, be applied to the repair or replacement.

The Owner of each Lot shall carry and keep in full force and effect, at all times at the expense of the Owner, casualty insurance with limits equal to the replacement value of the Improvements located thereon.

Section 3. Mailboxes. Every Owner shall purchase, install and maintain a mailbox meeting the specifications and standards establish by the Architectural Committee prior to the final building inspection for any dwelling built thereon.

Section 4. Sidewalks. The Owner of the Lots identified on the Final Plat for which a sidewalk is required, shall at said Owner's expense install or caused to be installed a sidewalk along the front boundary of its Lot in accordance with the standards established by the applicable governing authorities prior to a certificate of occupancy being issued or in all events, within ten (10) months after the final lift of the surface asphalt is installed on the roads within the Property.

Section 5. Street Trees. Each Owner, at said Owner's expense, shall install on its Lot, prior to occupancy, two (2) large deciduous shade trees in the front yard along the street three(3) or more may be required on corner or large frontage Lots to establish a tree canopy over the roads within the Property.

ARTICLE IX: USE RESTRICTIONS

The use restrictions set forth hereinbelow shall apply to each Lot to ensure the best use and most appropriate development and improvement of each Lot; to protect each Owner of each Lot against improper use of surrounding Lots as well as depreciation of the value of each Lot; to preserve, as far as practicable, attractive Improvements on such Lots, appropriately located on such Lots; to prevent haphazard and inharmonious improvements of such Lots; to secure and maintain proper setbacks from streets, and adequate spaces between structures; and, in general, to provide adequately for a high type and quality of Improvements on such Lots, and thereby enhance the value of investments made by Owners of such Lots.

A. Declarant or the Board of Directors, as the case may be, shall develop and maintain from time to time a set of Rules and Regulations governing the day to day use of the Lots and Common Area by the Owners thereof. Such Rules and Regulations may be amended by a majority vote of the Board of Directors.

B. None of said Lots shall be used for other than single-family residence purposes, and all Improvements erected on any Lot shall conform with all applicable requirements promulgated by any public authority having jurisdiction over the Property.

C. No house, trailer, tent, shack, temporary building, temporary toilet facility, satellite dish, antenna, outbuilding, barn or guest house shall be erected on any of said Lots without approval in writing of the Association.

D. Lots may be repartitioned to allow a Lot(s) or a portion of a Lot to be combined with an adjoining Lot to create one single-family residence thereon. Setback lines will be adjusted accordingly for the newly established Lot. There shall be no further subdivision of the Lots.

E. Setback lines shall be in accordance with those required by the regulations of applicable governing authorities, but shall be no less than those required by the Architectural Committee. The Architectural Committee shall have the absolute right to control the precise setback, finished floor elevation, and the location of any house, residence or other structure or Improvement upon all Lots in the Property. Such location shall be determined only after reasonable opportunity has been afforded to the Lot Owner to recommend a specific site. Exceptions to the setbacks established by the Declarant and/or the Architectural Committee may be permitted from time to time by written approval of the Architectural Committee.

F. Residences constructed on the Lots shall contain not less than three thousand (3,200) square feet of enclosed and heated floor area exclusive of carport, garage, and open porches.

G. No recreational or commercial vehicle of any kind, including but not limited to trucks, vans, boats, R.V.s, campers, racecars, trailers of any kind or the like, shall be stored or parked on any Lot, unless in a closed garage, or parked on the private driveway unless concealed from view in a manner satisfactory to the Architectural Committee.

H. No business activity of any kind whatever shall be conducted in any building or in any portion of a Lot; provided, however, the foregoing covenants shall not apply to the business activities, signs, or the construction and maintenance of buildings, if any, of the Declarant, its agents and assigns, during the development and sales period of Lots in the Property. The Architectural Committee shall have the authority to regulate non-Declarant real estate "for sale" or "built by" signs as to content, size, color, typeface and location.

I. Easements for roads, utility and drainage are reserved as shown on the Final Plat. No Owner shall, within any such easement areas or at other locations whether within or without designated easement areas, place or permit any structures, fencing, plants or other material which may damage or interfere with the installation and maintenance of utilities and/or interfere with the positive natural drainage established by Declarant. Further, no Owner shall install any Improvements or modify any existing grades in such a manner as would impair the positive, natural flow of water from or onto the Owner's Lot. The easement area and drainage facilities on each Lot shall be maintained continuously by the Owners of such Lot.

J. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

K. No animals, livestock or poultry of any kind shall be raised bred or kept on any lot except pets may be kept in accordance with the Rules and Regulations established by the Board, provided

that they are not kept, bred or maintained for any commercial purpose. In all instances, pets shall be restrained within fenced areas or kept under leash.

L. No debris, trash, ashes, lawn clippings, leaves, leaf bags or other refuse may be thrown or dumped on any of the Lots or Common Areas. Debris and trash during the construction of an Owner's Improvements shall be collected by each Owner (or his or her representative) in containers approved by the Architectural Committee and periodically removed so that no unsightly condition occurs on the Lot or adjoining Lots.

M. No building material of any kind or character shall be placed or stored upon any of said Lots until the Owner of the Lot is ready to commence construction or renovation of Improvements. Building materials shall be kept in an organized and compact manner and appropriate measures taken daily to prevent unsightliness during construction.

N. Grass and vegetation on each Lot shall be kept mowed and cleared of any debris 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 Lots by the Owner. Until an Improvement is built on the Lot, Declarant or the Association, in the discretion of either of them, after notice to Owner and a reasonable opportunity to cure, may mow the grass and have dead trees and debris removed from such Lot, and the Owner of said Lot shall be obligated to reimburse the Declarant or the Association for the cost of such work. Such cost shall create a valid lien on said Lot, which shall be enforceable, as a special Assessment against the Lot should the Owner refuse or neglect to comply with the terms of this paragraph.

O. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile, unused motor vehicles, or unsightly objects shall be allowed to be placed or to remain anywhere on any Lot. In the event that any Owner or occupant of any Lot shall fail or refuse to keep the Lot free from weeds, underbrush, refuse piles, unused motor vehicles, or other unsightly growths or objects, then the agent of the Architectural Committee may enter upon the Lot and remove the same at the expense of the Owner and such entry shall not be deemed a trespass. In the event of such a removal, the Owner shall pay the expenses thereof.

P. All equipment, building materials, garbage cans, service yards, playgrounds, wood piles, storage areas, portable sheds, and similar type items shall be kept screened by adequate planting or fencing so as to reasonably conceal them from view of neighboring Owners. In no event shall any of said items or uses be permitted in front yards. Corner Lots shall be considered to have a front yard on each side adjacent to the street. All rubbish, trash or garbage shall be regularly removed from the Lots.

Q. All exterior lighting on each Lot shall be constructed and maintained so as to provide such illumination as is necessary for that Lot only without unreasonably interfering with the peaceful enjoyment of any adjacent Owner. Cornice mounted "flood lights" are discouraged and only allowed with prior written approval of the Architectural Committee. The burden of proof will be upon the Owner to prove the proposed lighting will not illuminate on any street or neighboring Lot.

R. Owner's right of use of his Lot is subject to all laws, ordinances, rules and regulations of the applicable municipal and other governmental authorities. In the event of a difference between the use

restrictions contained in said ordinances, rules and regulations and laws and the use restrictions set forth in this Article, the more restrictive provision shall apply.

S. No Owner shall permit any use of his Lot or any Improvement thereon for any purposes which shall increase the fire hazard to adjoining properties; or for any purpose or use in violation of local, state or federal statutes or ordinances.

T. All exterior speakers are subject to regulation by the Association with regard to decibel levels at Lot boundaries.

U. No auxiliary recreational or athletic facilities, including but not limited to, swimming pools, tennis courts, basketball courts, and skating ramps, may be maintained on a Lot. Notwithstanding the foregoing, swimming pools may be permitted but only on a case-by-case basis and in the sole discretion of the Architectural Committee. If a swimming pool is permitted by the Architectural Committee as provided pursuant to this Section, the size, location and design of both the swimming pool and the privacy fence surrounding such pool shall also be further subject to Architectural Committee approval. Whether a swimming pool will affect the drainage of the applicable Lot as well as the surrounding Lots will be a determining factor in whether a swimming pool will be approved. All swimming pools permitted must be in compliance with all applicable governing regulations, ordinances, safety codes and requirements.

V. No gardens, visible to a neighbor or the public street, bee keeping structures, chicken coops, or dog kennels are permitted.

W. Any fence, including location thereof and materials therefore, constructed by Owner must be pre-approved by the Architectural Committee.

X. No swing sets, play sets, trampolines, or the like may be maintained on a Lot unless approved in writing by the Architectural Committee. If approved, said structures shall be adequately screened to neighboring Lots and public view and shall be promptly removed when no longer in active use.

Y. No statues or other lawn ornaments shall be permitted on a Lot without the prior written approval of the Architectural Committee except in the event the statue or lawn ornament is not visible to the public and to neighboring Lot Owners.

Z. In election years, only one (1) yard sign per candidate shall be permitted on a Lot.

AA. Trash carts shall be adequately screened from view from all roads when it is not the day of trash pickup.

BB. Beyond the boundaries of Lots 1 – 9 lies a wooded, “Stream Buffer” area. Owners shall have no right to access said area, remove vegetation from said area or dump clippings, trimmings or any other material or debris into said wooded, stream buffer area.

ARTICLE X: TERM OF DECLARATION

These covenants, conditions and restrictions are to run with the land and shall be binding upon all parties and all persons claiming under them, until the expiration of thirty (30) years after recordation of this document, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years unless by a vote of two-thirds of the then Owners of all Lots, it is agreed to terminate certain covenants, conditions and restrictions. Notwithstanding the foregoing, it is hereby established that in all events, the Common Areas, including without limitation the detention established for the Property, shall be at all times be maintained by the Association pursuant to the terms contained herein and such maintenance obligation shall in no event be terminated. Any such termination or rescission shall be effective upon recording of such instrument in the Register's Office.

ARTICLE XI: COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Except as otherwise provided herein, each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) regular Assessments or charges, to be collected either monthly, quarterly, or annually as the Association shall determine, (2) special Assessments for capital Improvements or other purposes, such Assessments to be fixed, established and collected from time to time as hereinafter provided, and (3) emergency Assessments as may be declared by the Board of Directors. The regular, special, and emergency Assessments, together with interest, costs and reasonable attorney's fees, if delinquent, shall be a charge and a continuing lien upon the Lot against which the Assessment is made until paid in full. Each such Assessment, together with interest, costs, and reasonable attorney's fees, if delinquent, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment became due.

Notwithstanding the foregoing or anything contained herein to the contrary, Declarant shall in no event be obligated to pay regular, special, emergency or any other Assessment for any Lot owned by Declarant. Declarant shall be exempt from the obligation to pay any Assessments hereunder.

Section 2. Purpose of Regular and Special Assessments. The Assessments levied by the Association shall be used exclusively for the benefit, health, safety and welfare of the residents of the Property and for the construction, renovation, replacement and/or maintenance of any Improvements, Common Areas and easements of Declarant or the Association located on the Property, 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 liability insurance and the cost of such other insurance as the Association may determine; 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. Any professional fees (architectural, legal, and engineering) and compensation to the members of the Architectural Committee, provided no employees or agents of the Declarant may be entitled to compensation so long as Declarant is the owner of more than twenty-five percent (25%) of the Lots; and

F. The estimated and/or actual cost of all operating expenses, repairs, replacements, maintenance and replanting of the entry and other landscaped areas over which the Association has control; and

G. The estimated and actual cost of enforcing and policing all the terms, covenants, conditions, restrictions and other duties and obligations contained in this Declaration.

Section 3. Regular Assessments. The Association shall fix the regular Assessment at an amount sufficient to provide for the requirements hereof. The regular Assessment for each calendar year shall be determined by the Board of Directors. The Assessment shall be based upon the number of Units applicable to each Lot. The regular Assessments for a particular calendar year shall become a lien upon the Lots on the first day of such calendar year.

Section 4. Special Assessments. In addition to the Assessments authorized above, the Association may levy special Assessments (based upon the Units) for such purposes as it may determine, provided that any such Assessment shall have the affirmative vote of at least fifty-one (51%) percent of the total number of votes based upon the Units allowed within the Association, cast in person or by proxy at a meeting duly called for that purpose. Written notice of such meeting must be sent to all Members and Declarant not less than ten (10) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. A special Assessment hereunder shall become a lien upon the Lots upon approval of such special Assessment in accordance with the foregoing.

Section 5. Emergency Assessments. In the event of any emergency situation, condition or occurrence affecting the life, health, safety or welfare of the Owners or Property of Owners, the Board of Directors, acting pursuant to this section, may declare an emergency Assessment in such amount and payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency Assessments, except for the amount and time of payment, shall be governed by all other provisions of this Declaration which pertain in general to all types of Assessments authorized herein. The Board of Directors shall be duly protected and not liable for any mistake in judgment hereunder if the emergency Assessment was made in good faith.

Section 6. Assessment. Regular, special and emergency Assessments shall be collected on a yearly, quarterly or monthly basis as determined by the Board of Directors.

Section 7. Quorum for Any Action Authorized Under Sections 3 and 4. At any annual or specially called meeting for the purposes set out in Sections 3 and 4 hereof, the presence at the meeting of Members or of proxies entitled to cast fifty-one (51%) percent of all of the votes of Membership based upon the Units shall constitute a quorum. If the required quorum is not present at any meeting, an adjourned meeting may be called, subject to the notice requirements set forth in Section 4 hereof, and the required quorum at any such adjourned meeting shall be fifty (50%) percent of the required quorum at the preceding meeting. No such adjourned meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Date of Commencement of Annual Assessments-Due Dates. In no event shall an Assessment be charged or levied against any Lot that is owned by Declarant. Subject to the terms contained in this Section, the Assessments provided for herein shall commence as to each Lot on the first day of the month following the transfer from Declarant of a Lot to an Owner except if the Owner is a homebuilder and holding title to the Lot solely for the purpose of development and resale in which event the terms below shall govern. Notwithstanding anything contained herein to the contrary, for a period not to exceed two (2) years, no Assessment shall be charged against a Lot owned by a home builder holding title to that Lot solely for the purpose of development and resale. The Assessments against a Lot owned by a home builder shall commence upon the earlier of (i) the first day of the month following the transfer of a Lot to a third party by such home builder (ii) occupancy of the Lot for his/her personal residence or (ii) the second anniversary of the purchase of the Lot by said homebuilder. The Association shall, upon request, furnish a certificate in writing signed by a representative of the Association setting forth whether the assessments on a Lot have been paid. A reasonable charge may be made for the issuance of such certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessments.

A. Remedies of the Association, Generally. Any Assessments which are not paid when due shall be delinquent. If the Assessment is not paid within fifteen (15) days after the due date, the Assessment shall bear interest from the due date at the rate set by the Association, or if no rate is set, at the highest rate allowed by law, plus a late charge equal to ten percent (10%) percent of the amount not paid when due. The Association may bring an action at law against the Owner to collect the Assessment or in equity to enforce the lien provided for herein or exercise its right of public sale as set forth hereinbelow if payment is not made within thirty (30) days from the due date. 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 Lot. The Owner of a Lot on which there are delinquent Assessments shall not be permitted to participate or vote in any meeting of the Association, and may, along with his guests and the occupants of his Lot, be prohibited, by properly adopted resolution of the Board of Directors, from using the Common Area or other privileges of membership in the Association.

B. Enforcement of Lien. For and in consideration of the privileges, protections, mutual enjoyment and use of the Common Area and the premises contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, and any assumption of the obligations by transferees as required hereunder, and to secure the payment of regular, special and emergency Assessments as provided for herein, any Fine(s), principal, interest and attorney's fees, a lien is expressly retained by the Association on each and every Lot. Such lien may be enforced by an action in a Court of equity for attachment of the Property and sale pursuant to Order of Court or, in the alternative, the Board of Directors of the Association shall have the authority and power to sell the Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such public sale if and only if such sale is made subordinate to any prior recorded lease, mortgage or deed of trust upon the Lot. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association the Assessment for the Lot during the period of foreclosure, and the Association shall be entitled to the appointment of a Receiver to collect the same. Any such sale shall be made after first advertising the sale of the Lot for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of Shelby, City of Memphis, State of Tennessee, giving notice of the time

and place of such sale of the Lot. Written notice to the Owner is hereby waived and shall not be required. Any sale of Property to enforce a lien for delinquent and unpaid Assessments shall be free from equity of redemption, statutory right of redemption, homestead and dower and all other exemptions, all of which are expressly waived by the Owner, and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded leases, mortgages or deeds of trust.

The Board of Directors shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey same. The proceeds of any such sale shall be applied first to the payment of the expenses of protecting the Lot and the expenses of litigation, attorney's fees, and sales commissions; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust; and third, to the payment of all amounts due the Association under the terms of the Declaration and Bylaws; and fourth, to the payment of any other mortgages or deeds of trust; and the balance, if any, according to applicable law. 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 Lot in default and shall have the right to secure the payment through notice to those in possession in the same manner as a mortgagee entering into possession following default.

All rights, remedies and privileges granted to the Board of Directors or an 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 remedies 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 require the Owner of the Lot which is delinquent on any Assessment levied pursuant to this Declaration or is in default in the performance of any other obligation hereunder for a period in excess of sixty (60) days, to notify the holder of any and all mortgages and deeds of trust on the Lot of any delinquency or default.

Section 10. Fine. The Architectural Committee, except as provided in Article XIII, and/or Board of Directors of the Association shall have the right to impose a fine not to exceed Five Hundred Dollars (\$500.00) as adjusted annually by any increase in the Consumer Price Index (or any substitute index) for any one violation of the covenants contained herein. Such a fine shall be in addition to the remedies set forth previously, and shall not restrain the aforementioned entities from taking any or all of the remedies and actions outlined in this Declaration. A violation which continues after the provision of written notice shall be treated as a continuous violation and shall result in a fine of Two Hundred Fifty Dollars (\$250.00), adjusted annually by any increase in the Consumer Price Index, per day until the violation ceases. Fines shall be attributable to each Lot and shall be a personal obligation of the Owner and shall be secured by a lien on such Lot at the time they become payable, pursuant to notice given by the Board of Directors by billing or otherwise (whether or not such notice is received by the Owner), and such lien shall also cover interest and any necessary collection expenses, including attorneys fees, provided, however, that such lien shall be subordinate to real estate taxes and any deed of trust or mortgage to secure a bona fide indebtedness recorded prior to the giving of such notice, or within ten (10) days after receipt of a written acknowledgement from the Association that no charges are outstanding against such Lot.

Section 11. Acceleration of Installments. Upon default in the payment of any one or more installments of any Assessment levied pursuant to this Declaration, 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, fifteen (15) days after written notice of such default is given to the Member.

Section 12. Subordination of the Lien to Mortgage. The lien of the Assessments payable by the Owner of a Lot shall be subordinate to the lien of a prior recorded Mortgage or Deed of Trust (and to any mortgage or deed of trust given by Declarant as security for any construction or development loan), except for the amount of such Assessments which become due and payable from and after the date on which the mortgagee or beneficiary thereunder either takes possession of the Lot encumbered thereby, accepts a conveyance of any interest therein (other than as security) or forecloses its mortgage or deed of trust. This Section 12 shall not be amended, changed, modified or rescinded without the prior written consent of all mortgagees and beneficiaries of record.

Section 13. Additional Default. Any recorded mortgage or deed of trust secured by any Lot shall provide that any default by 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 deed or trust (or of the indebtedness secured thereby), but failure to include such a provision in any such mortgage or deed of trust shall not affect the validity or priority thereof, and the protection extended to the holder of such mortgage or deed of trust (or of the indebtedness secured thereby) by reason of this Article shall not be altered, modified or diminished by reason of such failure.

Section 14. Exempt Property. All Properties dedicated to and accepted by a local public authority and the Common Area shall be exempt from the Assessments created herein except as otherwise specifically provided.

ARTICLE XII: ENFORCEMENT OF DECLARATION

If any Owner, his heirs, personal representatives, successors or assigns shall violate or attempt to violate any of the covenants, conditions and restrictions set forth herein, any Owner, Declarant, and/or the Association may prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, condition or restriction to prevent such violation or attempted violation, may seek specific performance or may recover damages for any such violation. Failure to enforce any of such covenants, conditions and restrictions shall in no event be deemed a waiver of the right to do so thereafter. In the event of such litigation, the party guilty of such violation or attempt to violate shall pay the other parties attorney's fees and costs incurred in enforcing this Declaration.

ARTICLE XIII: MISCELLANEOUS PROVISIONS

Section 1. Liability of Declarant. The Declarant and all members of the Architectural Committee are hereby expressly relieved of any liability to any Owner, and to any other party to the extent permitted by law, for any act of omission or commission in connection with performance of their functions as Declarant or such member, except for willful misconduct or act of bad faith.

Section 2. Severability of Covenants, Conditions and Restrictions. Invalidation of any one or more of the covenants, conditions and restrictions or other provisions herein or hereafter set forth by any

judgment or court order shall in no way affect any of the other covenants, conditions and restrictions which shall remain in full force and effect.

Section 3. Gender and Grammar. The singular whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, or individuals, men or women, shall in all cases be assumed as applicable.

Section 4. Amendment. Except as may otherwise be specifically provided herein, this Declaration may be amended at any time during the initial term hereof or any extension thereof by an instrument signed by Members having not less than sixty-seven percent (67.0%) of the total number of votes eligible to be cast, with such amendment to be effective upon recording in the Register's Office of Shelby County, Tennessee.

Section 5. Condemnation, Destruction or Termination of the Common Area. In the event of loss or damage to the Common Area as a result of condemnation, in whole or in part, or partial or total destruction, the Board of the Association shall represent the Association in any proceedings, negotiations, settlements or agreements. In representing the Owners, the Board of the Association shall serve as the attorney-in-fact for the Owners. Any proceeds from any settlement shall be payable to the Association for the benefit of the Owners.

Section 6. Contract for Property Management. Declarant may retain the services of a professional management company to manage and maintain the Common Areas of the Property. Any such contract shall include a right of termination without cause which may be exercised by the Association at any time after the transfer of control from Declarant. There shall be no penalty for the right of termination by the Association and advance notice of termination shall be required of no more than ninety (90) days.

Section 7. Rights of Mortgage or Deed of Trust Holders, Insurers or Guarantors. The holder, insurer or guarantor of a mortgage or deed of trust on any Lot in the Property shall have the right to timely written notice of the following:

- A. Any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing its mortgage;
- B. Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
- C. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
- D. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

To be entitled to receive this information, the mortgage or deed of trust holder, insurer or guarantor must send a written request to the Association, stating both its name and the address of the Lot on which it has or insures or guarantees the mortgage.

Section 8. Rerecording of Plat. By the acceptance of a deed conveying title to a Lot, the Owner thereof shall be deemed to consent to amendments or modifications of the Final Plat of the Property for any reason that adds Additional Property, maintains or advances the orderly development of the Property as determined by Declarant in Declarant's sole discretion, and for the purpose of technical corrections, boundary line adjustments, etc. and Owner hereby waives its right to join into such amendments or modifications of the Final Plat by virtue of its ownership of a Lot.

Section 9. Insurance. The Association shall obtain and maintain at all times, to the extent obtainable, policies of insurance, written with financially responsible and able companies, licensed to do business in Tennessee, covering the risks of:

A. Bodily injury and property damage liability insurance in such limits as the Board may from time to time determine; and

B. Worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, and subcontractors of the Association in the amounts and in the forms now or hereafter required by law; and

C. Fidelity coverage against dishonesty of employees or any other Persons handling funds of the Association, destruction or disappearance of money or securities and forgery and endorsements thereto covering any Persons who serve the Association without compensation; and

D. Insurance against such other risks of a similar or dissimilar nature as the Board shall deem appropriate with respect to the Property, including insurance on any personal property of the Association located thereon, and Directors and Officers liability insurance with respect to the actions of the Board and officers of the Association. The types of coverage and limits of all insurance carried pursuant to these provisions or failure to carry adequate coverage shall not be subject to question or claim against the Association or its Board. Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of such additional insurance carried by any Owner.

Section 10. Construction by Declarant. Notwithstanding any provisions herein to the contrary, it shall be expressly permissible for the Declarant to maintain, during the sale of said Lots, upon such portion of the Property as the Declarant deems necessary, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the sale of said Lots, including without limitation, storage areas, construction yard, signs, and sales office.

Section 11. Changes by Declarant. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to unilaterally amend this Declaration, in whole or in part, to conform this Declaration to the requirements of any governmental agency, for the requirements of any mortgage lender, or if in the reasonable judgment of the Declarant an Amendment is required to insure the orderly development of the Property.

Section 12. Notices. Any notice required to be sent to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last

known address of the Person who appears as an Owner or Member on the records of the Association at the time of such mailing.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration on the day and year first above written.

Boyle Investment Company, a Tennessee corporation

By: _____

Title: _____

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public of the state and county mentioned, personally appeared _____, 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 _____ of **Boyle Investment Company**, a Tennessee corporation, the within named bargainer, and that he as such _____, executed the foregoing instrument for the purposes therein contained, by signing the name of **Boyle Investment Company**, a Tennessee corporation, by himself as _____.

WITNESS my hand, at office, this ____ day of _____, 20_____.

My Commission expires:

Notary Public

EXHIBIT "A"

4815-6546-4966, v. 3