



**Amended and Restated
Declaration of Covenants, Conditions
And Restrictions for
Halle Plantation
Homeowners Association of
Collierville, Inc.**

(Halle HOA Covenants)

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTIRCTIONS FOR HALLE
PLANTATION SUBDIVISION

THIS AMENDED AND RESTATED DECLARATION is made as of this ____ day of _____, 19____, by RHK VENTURE, a joint venture consisting of Halle Plantation Venture (a partnership composed of James G. Robbins and David P. Halle, Jr.) and Russell H. Kostka, and is joined in by the parties whose signatures appear below.

RECITALS

- A. The following words, when used in this Declaration, shall have the following meanings:
1. "Amended Original Declaration" shall mean the original Declaration, as amended by the First Amendment to the Original Declaration, the Second Amendment to the Original Declaration, and the Third Amendment to the Original Declaration.
 2. "Annual Assessment" shall have the meaning set forth in Section 3.2 of the Declaration.
 3. "Architectural Control Committee" Shall have the meaning set forth in Section 6.1 of the Declaration.
 4. "Common Area" or "Common Areas" shall mean all land in the Subdivision and Improvements thereon which is owned by HPHA for the common use and enjoyment of Members of HPHA, including (but not limited to) all land or areas designated as common open space on any Phase Plan and all medians, recreational facilities, community facilities, parks and lakes within the Subdivision.
 5. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Halle Plantation Subdivision, and any supplement or amendment hereto which may hereafter be made and recorded in the Register's Office, in accordance with the provisions hereof.
 6. "Developer" shall mean RHK Venture, a joint venture consisting of Halle Plantation Venture (a partnership composed of James G. Robbins and David P. Halle, Jr.) and Russell H. Kostka, and its successor in interest, if any, as the developer of the Subdivision and owner of the Developer's Property and Unsold Lots. The term "Developer" shall also include James G. Robbins and David P. Halle, Jr., individually, and Halle Plantation Venture with respect to any period of periods of time prior to the date of the Declaration when they, or any of them, owned and were in the process of developing the Developer's Property.

7. "Developer's Property" shall mean approximately 456.4 acres of land situation in Shelby County, Tennessee, as more particularly described in Exhibit A attached hereto and incorporated herein by reference; provided, however, that any portion of such land which is (or has been) subdivided into Lots or Common Areas by one or more Phase Plans shall, from and after the recording of such Phase Plan in the Register's Office, be excluded from Developer's Property shall thereupon be deemed to be and become Lots or Common Areas, as the case may be; and provided further, however, that the Developer's Property shall not include any portion of the Golf Course Expansion.
8. "Eligible Mortgage Holder" or "Eligible Mortgage Holders" shall mean the beneficiary or beneficiaries of any first priority mortgage or deed of trust encumbering any Lot or Lots, who has given HPHA notice of its or their interest in such Lot or Lots in strict accordance with the provisions of Section 12.1 of the Declaration.
9. "Emergency Assessment" shall have the meaning set forth in Section 3.4 of the Declaration.
10. "First Amendment to the Original Declaration" shall mean that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Halle Plantation Subdivision dated as of September 12, 1988, entered into by Developer and others, of record under Register's No. AR 9457 in the Register's Office.
11. "Golf Course" shall mean that certain land presently owned by or under lease to X-L Service, Inc., which land is adjacent to and lies hereto, and upon which is located and operated a golf course known as the Houston Levee Golf Course.
12. "Golf Course Expansion" shall mean that certain land situated in Shelby Count, Tennessee, which was originally a portion of the Developer's Property as described in Exhibit A hereto, and which was conveyed by Developer to X-L Service, Inc., by quitclaim deed of record under Register's No. AH 3250 in the Register's Office. The Golf Course Expansion is more particularly described in Exhibit B attached hereto and incorporated herein by reference.
13. "Golf Course Property" shall mean, collectively, the Golf Course and the Golf Course Expansion.
14. "HPHA" Shall mean Halle Plantation Homeowners' Association, Inc., a nonprofit corporation organized and existing under the laws of the State of

Tennessee to own, maintain, and operated the Common Areas as hereinafter provided, and serve as representative of Developer and the Owners with respect thereto.

15. "HPHA Board" shall mean the Board of Directors of HPHA July elected as provided in the HPHA Charter and HPHA By-Laws.
16. "HPHA By-Laws" shall mean the by-laws of HPHA, as duly adopted, amended, or rested from time to time in accordance with the applicable provisions of Tennessee law, the Declaration, the HPHA Charter, and the HPHA by-laws.
17. "HPHA Charter" shall mean the corporate charter of HPHA as duly adopted, amended, or restated from time to time in accordance with the applicable provisions of the Tennessee Law and the Declaration.
18. "Improvements" shall mean the structures, walks, pavements, plantings, and other permanent additions built or placed upon the Lots or the Common Areas.
19. "Lot" or "Lots" shall mean the plot or plots of land designated as singlefamily residential lots on the Phase Plan. Ownership of a Lot shall include and undivided interest in the Common Area owned by HPHA.
20. "Member" or "Members" shall mean any Person who holds membership in HPHA.
21. "Original Declaration" shall mean that certain Declaration of Covenants, Conditions and Restrictions for Halle Plantation Subdivision dated as of February 15, 1988, entered into by Developer and others, of record under Register's No. AH 3252 in the Register's Office.
22. "Owner" or "Owners" shall mean, whether one or more Persons, the record owner of fee simple title to any Lot, including contract sellers but excluding any Person having any interest in any Lot merely as security for the payment or performance of any indebtedness or obligation; provided, however, that any purchaser at any foreclosure sale, trustee's sale, or judicial sale pursuant to the enforcement of liquidation of any such security interest shall, upon receipt of conveyance or other vesting of fee simple title to any Lot, be deemed the Owner thereof; and provided further, however, that if ay Lot is owned by more than one Person, all of such Person, for the purposed of the Declaration, shall be considered as being only one (1) Owner as to such Lot.

23. "Owner's Proportionate Share" shall mean a fraction, the numerator of which is the number of Lots owned by the Owner and the denominator of which is the total number of Lots in the Subdivision, in each case as of the date for which the Owner's Proportionate Share is being determined.
24. "Person" or "Persons" shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.
25. "Phase I" shall mean Phase One, Halle Plantation P.D., as shown on plat last re-recorded in the Plat Book 131, page 6, in the Register's Office, consisting of 138 Lots and the Common Areas as shown on said plat.
26. "Phase II" shall mean Phase II, Halle Plantation P.D., as shown on plat of record in Plat Book 128, page 78, in the Register's Office, consisting of 56 Lots and the Common Areas as shown on said plat.
27. "Phase IV" shall mean Phase IV, Section "A" Halle Plantation P.D., as shown on plat of record in Plat Book 136, page 58, in the Register's Office, consisting of 28 Lots and the Common Areas as shown on said plat.
28. "Phase Plan" or "Phase Plans" shall mean a final plan (Including any subsequent amendment thereto or re-recording thereof) of phased planned development of the portion or portions of the Developer's Property into Lots and/or Common Areas which shall have been given final approval by all necessary governmental authorities having jurisdiction thereof, and recorded in the Register's Office. The Phase Plans shall include (but not limited to) Phase I, Phase II and Phase IV.
29. "Plat" shall mean, collectively, all Phase Plan from time to time recorded in the Register's Office.
30. "Register's Office" shall mean the Register's Office of Shelby County, Tennessee
31. "Restrictions" shall mean the covenants, conditions, and restrictions set forth in the Declaration.
32. "Second Amendment to Original Declaration" shall mean that certain Second Amendment to Declaration of Covenants, Conditions, and Restrictions for Halle Plantation Subdivision dated as of November 7, 1989, entered into by Developer, of record under Register's No. CU 8340, in the

Register's Office, by which Phase II was added to the Subdivision and the Declaration.

33. "Special Assessment" shall have the meaning set forth in Section 3.3 of the Declaration.

34. "Subdivision" shall mean Halle Plantation Subdivision, a planned development of the Developer's Property, as shown on one or more Phase Plans heretofore or hereafter recorded in the Register's Office. The Golf Course Expansion shall not be, nor be deemed to be, included within the Subdivision.

35. "Third Amendment to Original Declaration" shall mean that certain Third Amendment to Declaration of Covenants, Conditions and Restrictions for Halle Plantation Subdivision dated as of December 6, 1991, entered into by Developer, of record under Register's No. CU 8341, in the Register's Office, by which Phase IV was added to the Subdivision and the Declaration.

36. "Unsold Lots" shall mean those Lots in the Subdivision which are owned by the Developer.

- B. Developer has heretofore acquired fee title to the Developer's Property, and has developed and will, in the future, develop portions of the same into the Subdivision.
- C. Developer intends to develop the Subdivision in an undetermined number of phases, as set forth (or to be set forth) in the Plat.
- D. Developer intends the Golf Course Property to be benefitted by, but not subject to, the Restrictions.
- E. Developer has heretofore entered into the Amended Original Declaration for the purpose of subjecting the Developer's Property to the covenants, conditions, and restrictions set forth in the Amended Original Declaration.
- F. Developer has heretofore, and will hereafter, convey Lots, in one or more transactions, to one or more Persons.
- G. Developer and the Owners desire to amend the Amended Original Declaration, and to restate all the terms and provisions thereof, in their entirety as so amended, in the Declaration.
- H. The requisite number of Owners, Members, Developer and Eligible Mortgage Holders, as required under the applicable provisions thereof, in their entirety as so amended, in the Declaration.

NOW, THEREFORE, it is hereby agreed and declared that the Amended Original Declaration is hereby superseded, and amended and restated in its entirety, and that the Developer's Property, the Lots, and the Common Areas shall be held, sold, conveyed, pledged, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, each of which is included for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Subdivision, and the Golf Course Property.

ARTICLE I MUTUALITY OF BENEFIT AND OBLIGATION

Section 1.1. Purpose. The Restrictions are made for the mutual and reciprocal benefit of each and every Lot and are intended to create mutual, equitable servitudes upon each Lot in favor of each and all the other Lots, to create reciprocal rights between the Owners, to create a privity of contract and estate between and among the grantees of Lots, and their respective heirs, successors and assigns, and to provide incidental benefits, as set forth herein, to the owner, owners or lessees of the Golf Course Property.

Section 1.2. Restrictions to Be Binding and Run With the Land; Not Binding on Golf Course Property. The Restrictions shall be applicable to and run with the land of, the Subdivision and each Lot, and shall be binding on all parties having or acquiring any right, title, or interest in and to the Subdivision, and Lot, or any part or parts thereof. The Restriction shall inure to the benefit of each Owner, and to the benefit of the owner or owners of the Golf Course Property. The Restrictions shall not be binding upon any other land owned by the Developer other than the land contained within the Subdivision; even though such land may be contiguous with the land in the Subdivision; and without limiting the foregoing, it is expressly provided that the Restrictions shall not impose restrictions upon, but shall benefit, the Golf Course Property. Notwithstanding any term or provision set forth in the Declaration, nothing contained herein be construed to impose any undertaking or obligation upon the present or future owner, owners or lessees of all or any part of the Golf Course Property as or for a golf course or golf courses, presently or in the future.

ARTICLE II

HALLE PLANTATION HOMEOWNERS ASSOCIATION, INC.

Section 2.1. Creation. Developer has caused HPHA to be formed for the purpose of providing a not-for-profit organization to serve as representative of Developer and Owners, and for the other purposes set forth in the Declaration.

Section. 2.2. Structure. The structure of HPHA is set forth in the HPHA Charter and the HPHA By-Laws.

Section 2.3 Purpose. HPHA is formed for the creation, operation, management, and maintenance of all the committees, services, or facilities herein set forth; the enforcement of all covenants contained herein; the assessment, collection, and application of all charges imposed hereunder or liens created hereby; to take and hold title to, and to maintain, operate, and preserve all such property or assets conveyed or transferred to it for the purposes set forth in the Declaration; and for such other purposes as may be set forth in the HPHA Charter and the HPHA By-Laws.

Section 2.4 Membership. Every Owner shall be a Member of HPHA. Membership shall be appurtenant to, and may not be separated from, the ownership of such Member's Lot or Lots, and ownership of a Lot shall be the sole qualification for membership.

Section 2.5 Classes of Membership. Members of HPHA may be designated as such classes and have such rights as may be set forth in the HPHA Charter and the HPHA By-Laws.

Section 2.6 Voting Rights. Members of HPHA shall have such voting rights as may be set forth in the HPHA Charter and the HPHA By-Laws.

Section 2.7 Board of Directors. HPHA shall be governed by the HPHA Board, which shall be elected in the manner and have such powers as are provided in the HPHA Charter and the HPHA By-Laws; provided, however, notwithstanding any provision in the HPHA Charter and the HPHA By-Laws, the HPHA Board shall be bound by the Declaration, and shall have such additional powers and authority as set forth in the Declaration.

Section 2.8 Secured Parties. No Person holding title to, or having any interest in, a Lot as security for any debt or obligations shall be considered as Owner of such Lot; and no such Person shall be entitled to membership in HPHA, or to cast any vote on any question or matter affecting the administration of HPHA, except as expressly herein provided.

ARTICLE III

ASSESSMENTS

Section 3.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in at such deed or other conveyance, shall be deemed to covenant and agree to pay to HPHA: (1) annual assessments or charges; (2) special assessments for capital improvements or otherwise, as hereinafter expressly provided; and (3) emergency assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual, special and emergency assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such land and shall be continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided, shall thereon and cost of collection thereof as are hereinafter provided, shall also be personal obligation of the Owner of such Lot at the time when the assessment fell due.

Section 3.2 Annual Assessments. Each Owner shall pay to HPHA an annual sum ("Annual Assessment") equal to the Owner's Proportionate Share of the sum required by HPHA, as estimated by the HPHA Board, to meet the annual expenses of HPHA, including but in no way limited to, the following:

- (a) The cost of all the operating expenses of HPHA and services furnished, including charges by HPHA for its facilities, if any; and
- (b) The amount of all taxes and assessments levied against HPHA or upon any property which it may own or which it is otherwise required to pay, if any; and

- (c) The cost of extended liability insurance and the cost of such other insurance as HPHA may affect; and
- (d) The cost of funding all reserves established by HPHA, including, when appropriate, a general operating reserve and/or reserve for replacements; and
- (e) The estimated cost of repairs, maintenance, and replacements of Common Areas and any other item or facilities HPHA may be responsible for; and
- (f) The cost of yard maintenance should HPHA elect to contract for such maintenance for every Lot.

Subject to the provisions of Sections 3.10, 3.11, and 3.12 of this Article III, the HPHA Board shall determine the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period, but may do so at more frequent intervals should circumstances so require. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates, which may include (but shall not be required to include) provision for payment on a monthly or quarterly basis, shall be established by the HPHA Board.

Section 3.3 Special Assessments. In addition to the Annual Assessments, HPHA may levy in any assessment year a special assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair, or replacement of a described capital improvement for which HPHA is specifically responsible or for such other purposes as the HPHA Board may consider necessary (a "Special Assessment"). Any such Special Assessment shall first be approved by the vote of the Members (as hereinafter provided), in person or by proxy, at a regular or special meeting of the Members called for such purpose, pursuant to written notice of such meeting, setting forth the purpose thereof, sent to all Members at least thirty (30) days but not more than sixty (60) days prior to such meeting. Special Assessments which do not exceed, in the aggregate for any assessment year, an amount equal to three times the Annual Assessment for such assessment year, shall require approval by the majority of the votes cast, as aforesaid, at a regular or special meeting of the Members; Special Assessments which exceed, individually or when aggregated with previous Special Assessments for the assessment year, an amount equal to three times the Annual Assessment for such assessment year, shall require approval by two-thirds of the votes cast, as aforesaid, at a regular or special meeting of the Members.

Section 3.4 Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health or safety of Owners or property of Owners or HPHA, the HPHA Board, acting pursuant to this Section, may declare an emergency assessment ("Emergency Assessment") in such amount and payable at such time as the HPHA Board, in its sole discretion, shall deem necessary in order to remedy, or to provide for the remedying, of such emergency situation, condition or occurrence. Such Emergency Assessment against such Owner's Lot or Lots. For purposes of this Section, an emergency situation, condition, or occurrence as herein referred to shall mean any circumstances relating to the Common Areas or any other property or operation for which HPHA is or may be responsible, and the failure immediately to commence the remedying of the same, is reasonably likely to result in material injury or damage to persons or property in the absence of action taken to commence such remedy or to provide temporary protection against such injury or damage. The HPHA Board shall be fully protected and not liable for any mistake in judgement hereunder if the Emergency Assessment, and the action taken, is made in good faith.

Section 3.5 Non-Payment of Assessments. Any assessment levied pursuant to the Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided thereupon become a continuing lien upon the Lot of the Lots belonging to the Owner against whom such assessment is levied, binding upon such Lot or Lots and such Owner, its heirs, devisees, personal representatives, and assigns. To evidence the lien of any unpaid and delinquent assessments, the HPHA Board shall prepare, or cause to be prepared, a written notice setting out the amount of the unpaid indebtedness, the name of the Owner of the Lot, and the description of the Lot. Said notice shall be signed by an office of the HPHA and recorded in the Register's Office. The personal obligation of the Owner to pay such assessment shall, however, remain the personal obligation of such Owner for the statutory period, and a suit to recover a money judgement for non-payment of any assessment levied pursuant to the Declaration or the HPHA By-Laws, or any installment thereof, may be maintained without foreclosing or waiving the lien created herein.

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

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Owner irrevocably grants to the HPHA Board, acting by and through an HPHA Officer authorized by the HPHA Board, the power to sell such Owner's Lot at public outcry to the highest and best bidder for cash. The HPHA Board is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded mortgage or deed of trust upon the Lot. HPHA is hereby authorized to take any and all courses of action available to it for collection of the assessment which the laws of the State of Tennessee allow, it being intended, however, that HPHA will use reasonable efforts to collect such assessment by other means prior to resorting to the power of sale provisions set forth herein. The foregoing shall not be deemed to require HPHA to resort to litigation, or to exhaust all other remedies prior to invoking the remedy of power of sale provided herein, if the HPHA Board determines, in its sole discretion, that the exercise of the power of sale remedy is in the best interest of HPHA and its Members, under the circumstances the existing. Any such sale shall be made after first advertising the sale of said property for twenty-one (21) days by three (3) weekly publications in some newspaper published in the County of Shelby, State of Tennessee, giving notice of the time and place of such sale and by written notice of the time and place of such sale to the Owner of the Lot at such Owner's last known address. Any sale of a Lot to enforce alien for delinquent and unpaid assessments shall be free from equity of redemption, homestead, and dower and all other exemptions, all of which are expressly waived by the Owners; and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust as provided in

Sections 3.7 and 3.8. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the property and the expenses of litigation, attorneys' fees, and sales commission; and second the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust (unless sold subject to said taxes, mortgage, or deed of trust); and third, to the payment of all amounts due HPHA under the terms of the Declaration and HPHA By-Laws; and the balance, if any, shall be paid to the Owner whose Lot is sold, or to such Owner's assigns. Upon any default in the payment of any assessment, and the recording of the notice thereof as herein provided, the HPHA Board 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 of the Lot or by entry into possession in the same manner as a mortgagee entering into possession following default. HPHA may enforce its lien by whatever means available, including the power of sale granted herein or filing suit for foreclosure in the appropriate court.

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

HPHA may, if requested by the Eligible Mortgage Holder, notify such holder of any assessment levied pursuant to the Declaration which is delinquent for a period in excess of sixty (60) days, or of any other default by an Owner which continues for a period in excess of ninety (90) days.

Section 3.6. Acceleration of Installments. In the event any assessment shall be payable in installments, upon default in the payment of any one or more of the installments, upon default in the payment of any one or more of the installments, the entire balance of said assessment may be accelerated at the option of the HPHA Board and be declared due and payable in full.

Section 3.7 Priority of Lien. The lien established by this Article shall have preference over any other assessments, liens, judgments, or charges of whatever nature, except the following:

- (a) General and special assessments for real estate taxes on a Lot; and
- (b) The liens of any deeds of trust, mortgage instruments, or encumbrances duly recorded on the Lot prior to the assessment of the lien thereon, or duly recorded on said Lot after receipt of a written statement from HPHA reflecting that assessments on said Lot were current as of the date of recordation of said deed of trust, mortgage instrument, or encumbrance.

Section 3.8 Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to the Declaration upon any Lot shall subordinate to and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over all other mortgages) upon such interest made in good faith and for value received, provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a foreclosure or any other proceeding in lieu of a foreclosure. Any such delinquent assessment as to

which the lien is extinguished pursuant to the foregoing provision may be reallocated and assessed to all Owners as a common expense, including the purchaser at the foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment which said lien, if any, shall have the same effect and be enforced in the same manner as provided herein.

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

Section 3.9 Additional Default. Any recorded first mortgage secured by a Lot may provide that any default by the mortgagor in the payment of any assessment levied pursuant to the Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby), but the failure to include such a provision in any such mortgage shall not affect the validity or priority thereof, and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 3.8 of this Article shall not be altered, modified, or diminished by reason of such failure.

Section 3.10 Uniform Rate of Assessment. Both the Annual Assessment and Special Assessments shall be fixed at a uniform rate for all Lots.

Section 3.11 Date of Commencement of Annual Assessments. Annual Assessments as to all Lots in Phase I commenced and were determined as provided in Section 3.92 of the First Amendment to Declaration, and have been payable by all Owners of Lots in Phase I. Annual Assessments as to Lots in any subsequent phases of the Subdivision (including, but not limited to, Phases II and IV) shall commence upon the date of first recording in the Register's Office of the Phase Plan of which such Lots are a part; provided, however, that any Unsold Lot in any phase of the Subdivision, except Phase I, for so long as such Lot is owned by the Developer, shall not be subject to Annual Assessments until the date which is eighteen (18) months after the date upon which the deed conveying the first Lot in such phase from the Developer to an Owner other than the Developer is recorded in the register's Office; and provided further, however, that the HPHA Board may, by resolution, provide that the Annual Assessment for any Lots for the year in which such Lots first become subject to Annual Assessment, shall be adjusted according to the number of months remaining in the calendar year, after such Lots become subject to Annual Assessments. In all events each Lot shall become subject to Annual Assessments from and after the date upon which such Lot is conveyed by Developer to an Owner other Developer.

Section 3.12 Limitations on Annual Assessments. Annual Assessments have initially been fixed by the HPHA Board at the sum of \$300 per Lot per year, payable at the rate of \$25 per Lot per month. Subject to the rights of the Members to rescind the action and to the limitation, all as herein set forth, the HPHA Board shall have the power and authority to increase the Annual Assessment by not more than the sum of an additional \$300 per Lot per year payable at the rate of an additional \$25 per Lot per month, but (unless approved by the Members as herein provided) in no event to more than the total sum of \$1200 per Lot per year payable at the rate of \$100 per Lot per month. Notice of any such increase shall be given to the Owners as provided in Section 3.1. The Members shall have the right, by the affirmative vote of an absolute majority of the eligible votes of the Members (as distinguished from the vote of a majority of the votes cast by the Members present and voting at a meeting), to rescind the

increase for any year provided that such action is taken by the Members at the regular or special meeting of the membership of HPHA which has been called and held within sixty (60) days after the notice of the increase in the Annual Assessment for such year has been given to the Owners, as aforesaid. In order to increase the Annual Assessment to amounts greater than the limits set forth in the second sentence of this section 3.12, the same shall require the affirmative vote of an absolute majority of the eligible votes of the Members (as distinguished from the vote of a majority of the votes cast by the Members present and voting at a meeting) at a regular or special meeting of the membership of HPHA. The certification of an officer of HPHA that a vote provided for in this Section has been duly taken and recorded in the records of HPHA, and as to the results of such vote, shall constitute prima facie evidence of such action for all purposes.

Section 3.13. Certificates of Payment. Upon unwritten demand by any Owner and payment of such reasonable charge therefor as HPHA may establish, HPHA shall furnish to such Owner, or its designee, a written statement certified by an officer or authorized agent of HPHA setting forth the current status of all assessments and payments with respect thereto, on the Lot or Lots of such Owner. Any such certificate shall be conclusive with respect to the matters stated therein and may be relied upon by the Person to whom addressed.

ARTICLE IV

MAINTENANCE AND REPAIR

Section 4.1. HPHA Responsibilities. HPHA shall provide and pay for all maintenance and expenses for the Common Area including the street lights, medians, the sewers (both sanitary and surface water), if any, and the landscaping of the Common Area to the extent that the same are not maintained by the governmental or other public authority. HPHA may also contract for the maintenance of the individual yards on each Lot in the Subdivision. The real property taxes on the Common Area, if any, shall also be paid by HPHA.

Section 4.2. Owners' Responsibilities.

- (a) Interior Maintenance. Each Owner shall be responsible for all interior maintenance, painting, repair, and upkeep on its Lot and the Improvements thereon.
- (b) Exterior Maintenance. In order to retain the appearance of the development, the exterior maintenance of Improvements on individual Lots, including any which are connected by a party wall, shall be the joint responsibility of each Owner of such Lots. For the purposes of this subsection, exterior maintenance shall include, but not limited to, repairs to or replacement of the roof and painting of the exterior portions of the Improvements of a Lot. No exterior maintenance, repairs or replacements shall be commenced for the improvement of any Lot unless permission is obtained from the Architectural Control Committee, to the extent required under Article VI hereof, and (as to Lots connected by a party wall) unless the Owners of such Lots agree on the item to be repaired or replaced. If there is a dispute between Owners of Lots connected by a party wall with respect to the repair or replacement, or what items shall be shared by such Owners, the matters shall be submitted to the Architectural Control Committee on the same terms and in

the same manner as set out in Article VI. A determination by the Architectural Control Committee shall be binding upon each such Owner.

In the event an Owner shall fail to maintain its Lot and Improvements situated thereon in a manner satisfactory to the HPHA Board, HPHA, after approval by two-thirds (2/3) vote of the HPHA Board, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, or restore the Lot and the exterior of any Improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject and shall be a lien thereon which is enforceable in the same manner as provided in Article III for the collection of assessments.

ARTICLE V

USE OF FUNDS

Section 5.1. Use of Funds. HPHA shall apply all funds received by it pursuant to the Declaration and from any other source only as may reasonably benefit the Subdivision.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 6.1. Architectural Control Committee. An Architectural Control Committee is hereby established which shall, until September 12, 1995, consist of four (4) members, three (3) of whom shall be appointed by the Developer and one (1) of whom shall be appointed by the elected members of the HPHA Board. From September 13, 1995, until September 12, 1998, the Architectural Control Committee shall consist of five (5) members, three (3) of whom shall be appointed by the Developer and two (2) of whom shall be appointed by the elected members of the HPHA Board. The members of the Architectural Control Committee appointed by the elected members of the HPHA Board during the period ending September 12, 1998, shall be individuals who are either Owners or individuals designated for such purpose by corporations, partnerships, associations, trusts, or other legal entities (other than individuals) which are Owners, but who are neither partners, employees, nor agents of the Developer. Effective September 13, 1998, the HPHA Board shall then appoint the Architectural Control Committee, which shall be composed of the three (3) or more individuals who are either Owners or individuals designated for such purpose by corporations, partnerships, associations, trusts, or other legal entities (other than individuals) which are Owners. The Developer and the elected members of the HPHA Board shall each have the right to remove and replace any member of the Architectural Control Committee appointed by each, at any time and with or without cause. The affirmative vote of a majority of the membership of the Architectural Control Committee shall be required to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein. The Architectural Control Committee may employ or retain the services of such architects, engineers, contractors, or other craftsmen or professionals as it may reasonably deem necessary and proper to carry out its duties and functions under this Article VI, and the expense thereof (or portions of such expense) may, in the discretion of the Architectural Control Committee, be charged as part of the fees of the Architectural Control Committee as provided for herein.

Section 6.2. Approvals Necessary: Architectural Rules; Remedies for Violation. Other than by Developer, no Improvement of any kind or nature or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the Lots, nor shall any existing Improvement, fence, or barrier upon any Lot be altered in any way which changes the exterior appearance (which includes but is not limited to changes in paint color and re-roofing) thereof, nor shall there be any additions, attachments, or deletions to Improvements, nor shall there be any changes in landscaping, without the written consent of the Architectural Control Committee; nor shall any new use be commenced on any Lot unless plans and specifications (including a description of any proposed new use) shall have been submitted to and approved in writing by the Architectural Control Committee, but in any event shall include:

- (a) A site plan of the Lot showing the nature, exterior, color scheme, kind, shape, height, materials, and location with respect to said Lot (including proposed front, rear, and side setback) of all Improvements, fences, or barriers, and location of all parking spaces and driveways on the Lot; and (b) Grading and landscaping plans for the Lot.

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

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

If any Improvement, fence, or barrier shall be altered, erected, placed or maintained (including exterior maintenance) upon any Lot or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the Architectural Control Committee as required herein, such alteration, erection, maintenance, or use shall be deemed to have been undertaken in violation of the Restrictions and without the approval required herein, and upon written notice from the Architectural Control Committee any such Improvement, fence, or barrier so altered, erected, placed, or maintained upon any Lot in violation hereof shall be removed or re-altered, and such use shall be terminated so as to extinguish such violation.

If within fifteen (15) days after receipt of notice of any such violation, the Owner of the Lot upon which such violation exists shall not have commenced reasonable steps towards the removal or termination of the same, HPHA shall have the right through its agents and employees to take such action as HPHA may deem necessary to extinguish such violation, and the costs thereof shall be a binding personal obligation of such Owner as well as lien upon the Lot in question, enforceable in the same manner as provided in Article III hereof for the collection of assessments, upon the recording of such notice in the Register's Office.

Upon completion of the construction or alteration of any Improvement in accordance with the plans and specifications approved by the Architectural Control Committee, the Architectural Control Committee shall, upon written request of the Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such Improvement and the Lot on which such Improvement is place and stating that the plans & specifications, location of such Improvement, and the use or uses to be conducted thereon have been approved and that such Improvement complies therewith. Preparation and recording of such certificate shall be at the expense of the Owner of such Lot. Any certificate of compliance issued in evidence of the facts therein state, and as to any purchaser or encumbrancer in good faith and for value or as to any title insurer, such certificate shall be conclusive evidence that all Improvements and the use or uses described therein comply with all the requirements of the Restrictions and all other requirements as to which the Architectural Control Committee exercises any discretionary or interpretative powers.

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

The Architectural Control Committee or its duly authorized agent or agents may, at reasonable times, after giving at least ten (10) days prior written notice to the Owner, enter upon and inspect any Lot and any Improvements thereon for the purposes of ascertaining whether the maintenance of such Lot and maintenance of such Lot and the maintenance, construction, or alteration of Improvements thereon are in compliance with the provisions of the Restrictions, and no such persons shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

HPHA or ay Owner shall have the right to enforce by any proceeding at law or in equity all Restrictions herein contained or otherwise contained in any deed to any Lot. Failure by HPHA or by ay Owner to enforce any of such rights shall in no event be deemed a waiver of the right to do so thereafter.

Should a request to the Architectural Control Committee requiring action thereon be made by a member thereof, the other members thereof shall select a disinterested Owner to take the place of the member making the request, for the purpose of acting upon such request.

ARTICLE VII

EXCLUSIVE RESIDENTIAL USE AND SETBACKS

Section 7.1. Residential Lots. All Lots shall be known and described as residential lots, and shall be used for single family residential purposes exclusively. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the Restrictions, and to all easements, restrictions, and covenants set forth in the Phase Plan of which such Lots are a part.

Section 7.2. Building Setbacks. Building setbacks shall be observed, as provided on the Plat, subject, however to such encroachments or variances as may be permitted by applicable zoning laws and ordinances.

ARTICLE VIII

GENERAL PROHIBITIONS AND REQUIREMENTS

Section 8.1. Owner's Responsibilities. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkempt conditions of buildings or grounds on such Owner's Lot which would tend to decrease the beauty of the specific area or of the Subdivision as a whole.

Section 8.2. Maintenance. All Lots, whether occupied or unoccupied, and any Improvements placed thereon, shall at all times be maintained in a neat and attractive condition and in such manner as to prevent their becoming unsightly by reason of unattractive growth on such Lot or the accumulation of rubbish or debris thereon.

Section 8.3. Animals. No animals, livestock, or poultry of any kind or description, except the usual household pets, shall be kept on any Lot; providing, however, that no household pet may be kept on any Lot for breeding or commercial purposes. All household pets shall at all times be suitably leashed or penned, and no household pet shall be allowed at any time to wander or roam the Subdivision unattended. No household pet shall ever be allowed on the Golf Course Property, whether attended or not. Upon any violation of these covenants, Developer, HPHA, or the owners or lessees of the Golf Course Property may take such reasonable steps as may be necessary to capture, remove, and hold such pet by or for any governmental or non-governmental pet control agency or society. In connection with the foregoing provision, neither the Developer, HPHA, or the owners or lessees of the Golf Course Property, nor the agents or employees of any of the foregoing, shall be in any way responsible to the owner or the owners of such pet for any harm to such pet or the loss of use and enjoyment of such pet resulting from such capture, removal, or holding of such pet.

Section 8.4. Offensive and Commercial Activities. No noxious, offensive, or illegal activities shall be carried on or upon any Lot, nor shall anything be done on any Lot which is or may become an annoyance or nuisance to the neighborhood. No commercial activity shall be conducted on any Lot.

Section 8.5. Drilling; Mining. No oil or natural gas drilling, refining, quarrying, or mining operations of any kind shall be permitted upon any Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Lot; nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any Lot.

Section 8.6. Accumulation of Trash. No trash, garbage, hazardous waste, or other refuse shall be dumped, stored, or accumulated on any Lot. Trash, garbage, or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers shall be kept in a clean and sanitary condition, and shall be so placed so as not to be visible from any road, Common Area,

the Golf Course Property, or within sight distance of any other Lot at any time except during normal refuse collection. No outside burning of woods, leaves, trash, garbage, or household refuse shall be permitted.

Section 8.7. Signs. All signs, billboards, or advertising structures of any kind are prohibited except for one (1) professional sign of not more than five (5) square feet to advertise a Lot for sale or lease during a sales or leasing period and except for signs, billboards, or advertising structures erected by or on behalf of Developer during the development and sales period of the Developer's Property and Unsold Lots. No sign is permitted to be nailed or attached to trees.

Section 8.8 Detached Structures. No trailer, tent, shack, outbuilding, or barn shall be erected on any Lot, temporarily or permanently, except such as may be required, temporarily, for construction purposes only. No structure of a temporary character, trailer, basement, tent, shack, or outbuilding shall be used at any time for dwelling purposes.

Section 8.9. Boats; Trailers. No boat, boat trailer, house trailer, camper, van, recreational vehicle, or equipment or vehicle of a similar nature shall be parked or stored on any road, street, driveway, yard, or Lot for any period of time in excess of twenty-four (24) hours except in garages, or in other landscaped enclosures which effectively screen the visibility of such equipment or vehicle from any road or street, or from the adjoining Golf Course Property.

Section 8.10. Fences. No chain link fences may be used. No fence shall be constructed on any Lot nearer to any street line than the house line nearest to such street. All fences, including fences for back yards and swimming pools, must be approved by the Architectural Control Committee prior to construction. HPHA shall maintain, repair, and replace (as needed from time to time) the two-level split rail wooden fence which is initially to be constructed by Developer along the boundary of the Golf Course Property. Such fence shall be maintained in a uniform design construction consistent with the original installation thereof, and the cost of such maintenance, repair, and replacement shall be included as part of the Annual Assessment.

Section 8.11. Developer's Facilities. Notwithstanding any contrary provisions contained herein, Developer shall be permitted to maintain, during the period of development of Developer's Property and sales of the Lots, upon such portion of Developer's Property or the Unsold Lots as Developer deems necessary, such facilities as in the sole opinion of Developer may be reasonably require, convenient or incidental to such development or sales including, but not limited to a business office, storage areas, construction yard, signs, model units, and sales office.

ARTICLE IX

EASEMENTS

Section 9.1. Golf; Recovery of Balls; Assumption of Risk. An easement to permit the doing of every act necessary, proper, and incidental to the playing of golf on the Golf Course Property is hereby granted and established, and shall continue to exist for so long as any portion of the Golf Course Property adjoining any Lot shall continue to be used and maintained as, or in conjunction with, a golf course or golf courses. Such acts shall include, but not be limited to: (i) the recovery of golf balls from Lots adjoining the Golf Course Property by persons on foot lawfully using the adjoining golf course,

provided such golf balls can be recovered without damaging any flowers, shrubbery, or the property in general; (ii) the flight of golf balls over and upon such Lots; (iii) the use of necessary and usual equipment upon such golf course; (iv) the usual and common noise level created by the playing of the game of golf; and (v) all other common and usual activities associated with the game of golf, and with all of the normal and usual activities associated with the maintenance and operation of the golf course. The Owner of each Lot which may adjoin the Golf Course Property, by acceptance of the deed to or other conveyance of such Lot, assumes all the risk of loss, damage, or injury to persons or property in or upon such Lot arising out of the use of and activities upon the Golf Course Property and the exercise, use and enjoyment of the easement rights provided in this Section 9.1., and no suit, claim, or action shall be made or brought against Developer or the owner or owners of the Golf Course Property, or any servant, agent, or employee of any of them on account of, or arising out of, such use or activities or out of the exercise of such rights by any person or persons entitled thereto, whether or not such use or exercise be performed, or by claimed to have been performed, in a negligent manner; provide, however, that the foregoing shall not bar or be deemed to bar any Owner from making or bringing suit, claim, or action against any person or entity (other than Developer or the owner or owners of the Golf Course Property, their respective successors and assigns, or the servant, agent, or employee of any of them) arising out of a negligent act or omission of such other person or entity.

Section 9.2. Golf Course Boundary; Buffer. Unless otherwise specified by written instrument in recordable form executed by the owner or owners of the Golf Course Property, and easement ten (10) feet in width, on each Lot wholly or partially bounded on one or more sides by the Golf Course Property is hereby retained and reserved over each side of such Lots which bound the Golf Course Property for the purpose of maintaining a natural buffer area between golf and residential uses. No fence, wall, hedge, or shrub planting which would obstruct access from the Golf Course Property to the property covered by said easement shall be placed or permitted to remain on Lots; provided, however, HPHA shall, as provided in section 8.10 hereof, maintain, repair, and replace the two-level split rail wooden fence initially constructed by Developer along the boundary of Golf Course Property. No tree four (4) inches or more in diameter measured at a point two (2) feet above the average height of the ground at the base, nor any shrub or dogwood trees of any size may be removed from this easement areas without the specific prior written approval of Developer, the HPHA Board, or the Architectural Control Committee. Violation of this covenant shall be subject to the penalty of a stipulated liquidated damage sum of \$50.00 per inch of diameter measured as hereinbefore specified for each tree, and \$50.00 for each shrub removed without the specified authorization; provided, however, the maximum liquidated damages shall not exceed \$2,000.00 for any Lot. The recovery of such liquidated damages shall be available to Developer, HPHA, or to the owner or owners of the adjoining Golf Course Property, or their respective successors and assigns to be used to replace the removed trees or shrubs.

Developer, HPHA, or the owner or owners of the Golf Course Property, shall have the right (but not the obligation) to make selected plantings of trees and other vegetation within the ten (10) foot easement in order to establish and maintain a buffered relationship between the golf and residential uses as herein intended. Whichever of the Developer, HPHA, or such owner or owners of the Golf Course Property shall perform any such work, shall provide the Owner of any Lot with a description of the work to be done on such Lot at least fourteen (14) days in advance of the actual work so that the mutual interests and desires of the Owner and Developer, HPHA, or the owner or owners of the Golf Course Property, may properly be coordinated.

Section 9.3. Dedication of roads; Utilities. Developer reserves unto itself, its successors and assigns, the right to use, dedicate, and/or convey to the Stat of Tennessee, to Shelby County, to any other municipal or governmental entity or authority, and/or to any appropriate public or private utility company or companies, rights-of-way or easements on, over, under, or upon the ground to erect, maintain, and us utilities, electric, and telephone poles, wires, cables, conduits, storm sewers, sanitary sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, radio and television cables or wires, gas, sewer, water, or other public conveniences or utilities, on, in, and over the easements along the rear and side property lines of each Lot as shown.

Section 9.4. Drainage. Drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers, and/or easements as shown on the Plat, or on other recorded instruments in which reference is made to the Restrictions. Developer may cut drain ways for surface water wherever and whenever such action may appear to Developer or the HPHA Board to be necessary in order to maintain reasonable standards of health, safety, and appearance. These easements and rights expressly include the right of Developer or HPHA to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance. The provisions hereof shall not be construed to impose any obligation upon Developer or HPHA to cut or maintain any such drain way or easement.

Section 9.5. Dedication on Plan. Other easements for drainage, utilities, pedestrians, and sidewalks may be hereinafter created as shown by any plat or instrument hereafter recorded by Developer.

Section 9.6. Further Restrictions; Easements. Developer reserves the right to dedicate additional easements and roadway right-of-way on any Unsold Lots and to impose other and further restrictions as to any Unsold Lot, which may or may not benefit the Golf Course Property of any other Lot of Lots, as Developer may, in its sole discretion, determine to be appropriate.

Section 9.7. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to unintentional placement or settling or shifting of Improvements constructed, reconstructed, or altered thereon.

Section 9.8. Easement for Utilities, Etc. Developer hereby reserves for itself and its assigns (including without limitation, the City of Memphis, County of Shelby, or any utility) blanket easements upon, across, over, and under all of the Common Area and to the extent shown on the Plat over the Lots for ingress, egress, installation, replacing, repairing, and maintaining the Common Area, cable television systems, master television antenna systems, security, walkways, and all utilities (including, but not limited to, water, sewers, meter boxes, telephone, gas and electricity). This reserved easement may be assigned by Developer by written instrument to HPHA, and HPHA shall accept the assignment upon such terms and conditions as are acceptable to Developer. If this reserved easement is assigned to HPHA, the HPHA Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Subdivision.

ARTICLE X

ENFORCEMENT

Section 10.1. Right of Action. In the event of an actual or threatened violation or breach of any of the Restrictions by any Owner or by any person or entity using or occupying any Lot, then Developer, HPHA, any Owner, the owner or owners of the Golf Course Property, or any other party for whose benefit the Restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of the Restrictions, by injunction or otherwise, to sue for and recover damages or other dues, or to take any and all such courses of action or seek such legal or equitable remedy, which they, or any of them, may deem appropriate. No delay or failure on the part of the aggrieved party to invoke any available remedy set forth herein shall be held to be a waiver by that party, or an estoppel of any party, or of any other party, to assert or enforce any right or remedy available to such party upon the recurrence or continuations of said violation, or the occurrence of a different violation.

ARTICLE XI

LOT OWNER ACCEPTANCE

Section 11.1. Acceptance. The Owner of any Lot which is subject to the Restrictions, by acceptance of the deed or other instrument conveying any interest in or title to such Lot, or by the execution of a contract for the purchase thereof, whether from Developer or from a subsequent Owner of such Lot, shall accept, and shall be deemed to have accepted, such deed or other contract upon and subject to each and all of the Restrictions and the agreements herein contained, all of the same being covenants running with the land.

ARTICLE XII

INFORMATION; MORTGAGEE'S RIGHTS; CONSENTS AND APPROVALS

Section 12.1. Notice of Interest of Eligible Mortgage Holders; Effect. The beneficiary or beneficiaries of any first priority mortgage or deed of trust encumbering any Lot of Lots, in order to be entitled to the rights and benefits provided to or for the Eligible Mortgage Holders in the Declaration or under the HPHA By-Laws shall give (or cause to be given) written notice of its interest to HPHA, at its principal office in the State of Tennessee, which notice shall include the following:

- (a) The name and mailing address of such beneficiary or beneficiaries;
- (b) The name and mailing address of the Owner of the Lot or Lots so encumbered;
- (c) The Lot number or numbers, or other proper legal description, and the street address(es), of the Lot or Lots so encumbered;
- (d) The date and recording number(s) of the mortgage or deed of trust;
- (e) A statement that the mortgage or deed of trust constitutes a first priority mortgage or deed of trust encumbrance upon the Lot or Lots.

Any such notice shall become effective only upon receipt by HPHA, and until receipt of notice of change in the identity of the Eligible Mortgage Holder as to any Lot, the Eligible Mortgage Holder as to which such notice has previously been given to HPHA shall, for all purposes under the Declaration and the HPHA By-Laws, be deemed to be the Eligible Mortgage Holder as to such Lot.

Section 12.2. Information Made Available.

- (a) Upon Request, HPHA shall make available to any Owner or its designee, and to any Eligible Mortgage Holder, current copies of the Declaration, the HPHA By-Laws, and other rules concerning the affairs and management of the Subdivision, and the books, records and financial statements of HPHA. "Available" means available for inspection, upon request, at the principal office of HPHA during normal business hours.
- (b) Upon written request, HPHA shall furnish to any Eligible Mortgage Holder an audited financial statement for HPHA's immediately preceding fiscal year.

Section 12.3. Notices to Eligible Mortgage Holders. Upon written request to HPHA, and Eligible Mortgage Holder will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the project 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 a mortgage;
- (c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by HPHA;
- (d) Any proposed act that requires the consent or approval of a specified percentage of Eligible Mortgage Holders.

Section 12.4. Required Consents and Approvals

- (a) The affirmative vote of Members representing at least sixty-seven percent (67%) of the total votes eligible to be cast on the question and the affirmative vote of the Developer, as long as it owns any land subject to the Declaration, and the approval or at least sixty-seven percent (67%) of the Eligible Mortgage Holder, shall be required to terminate HPHA for reasons other than substantial destruction or condemnation of the property owned or controlled by HPHA
- (b) The affirmative vote of Members representing at least sixty-seven percent (67%) of the total votes eligible to be cast on the question, and the affirmative vote of Developer, as long as it owns any land subject to the Declaration, and the approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders, shall be required to materially amend any provisions of the Declaration, HPHA By-Laws, or HPHA Charter, or to add any material provisions thereto, which establish,, provide for, govern, or regulate any of the following: (i) voting; (ii) assessments, assessment subordination of said lien; (iii) reserves for maintenance, repairs, and replacement of the Common Area; (iv) insurance or fidelity bonds; (v) rights to use of the Common Area or reallocation of interests in the Common Area; (vi) responsibility for maintenance and repair of the Lots and/or Common Area within the Subdivision; (vii) boundaries of any Lot; (viii) imposition of any right of first refusal or similar restrictions of the right of any Owner to sell, transfer, or otherwise convey a Lot; (ix) convertibility of Lots into Common Area or vice versa; (x) expansion or contraction of the Subdivision or the addition, annexation, or withdrawal of property to or from

the Subdivision, other than as may be effected by the recording of Phase Plans as provided for in the Declaration; (xi) leasing of Lots; (xii) a decision by HPHA to establish self-management when professional management had been required previously by the Declaration, HPHA Charter or HPHA By-Laws or by an Eligible Mortgage Holder; (xiii) restoration or repair of the Subdivision after a hazard damage or partial condemnation in a manner other than that specified herein or in the HPHA Charter or HPHA By-Laws; (xiv) any actions to terminate the legal status of the Subdivision after substantial destruction or condemnation of the Subdivision occurs; and (xv) any provision included in the Declaration, HPHA By-Laws, and HPHA Charter which are for the express benefit of Eligible Mortgage Holders, which provisions do not set out a different required number of votes to amend the particular provisions.

- (c) Approval may be assumed if an Eligible Mortgage Holder fails to submit a response to any written notice of any matter for which its consent or approval is provided under the Declaration nor the HPHA By-Laws, within thirty (30) days after such Eligible Mortgage Holder receives such notice, provided the notice was given by certified or registered mail, with a return receipt requested.

Section 12.5. Rights of Other Encumbrancers. The holders or beneficiaries of, or other Persons having any interest in, any mortgage, deed of trust, lien, claim or other security interest in, or encumbrance of any Lot, other than Eligible Mortgage Holders, shall be fully bound by all actions taken or omitted by the Owner and Eligible Mortgage Holder (if any) of such Lot with respect to the amendment of any provisions of the Declaration, the HPHA By-Laws, and the HPHA Charter, and no consent or approval of such other encumbrancers shall be required as a condition to the effectiveness of any such actions, nor shall they be entitled to any notice of the matters set forth in Section 12.3 or otherwise.

ARTICLE XIII

SUBMISSION OF ADDITIONAL PROPERTY

Section 13.1. Additional Property. Developer intends to develop the Subdivision in phases. As each phase is developed, Developer will cause a Phase Plan to be recorded in the Register's Office setting forth the Lots, Common Areas, and other matters with respect thereto. Upon the recording of each such Phase Plan, the portion of the Developer's Property covered thereby shall become part of the Subdivision as provided in the Declaration and subject to all provisions with respect thereto. The maximum number of Lots in the Subdivision, upon completion of development shall not exceed 513. No amendment to, or supplement of, the Declaration shall be required in order to add phases to the Subdivision as provided for herein.

Section 13.2. Time Limit. There shall be no time limit for the completion of development of the Subdivision and the addition of phases to the Subdivision, as provided for in the Declaration. Developer shall have the right at any time, however, to discontinue development of further phases of the Subdivision so long as no phase for which development has commenced is left in an uncompleted condition. In the event Developer determines to discontinue development of further phases of the Subdivision, Developer shall file a declaration to that effect in the Register's Office, and shall take such

action as may be required under applicable laws and ordinances to remove the balance of Developer's Property from the Outline Plan of the Subdivision, which is currently of record in Plat Book 113, page 55, in the Register's Office.

Section 13.3. Rights; Assessments. The Owners of the Lots in the phases added to the Subdivision as herein provided shall have a pro rata right to use the Common Area and to vote on all matters as Members, and shall, subject to the provisions of Section 3.11 hereof, be obligated for assessments as determined by the HPHA Board, all as of the date of recording of each respective Phase Plan.

Section 13.4. Substantial Completion. All Improvements to the Common Areas in any future phase, for which HPHA or the Owners shall be or become obligated to maintain, shall be substantially completed at the time control of such Common Area is transferred to HPHA. At the time control of the Common Area of each future phase of the Subdivision is transferred to HPHA, Developer, at its expense, shall have completed the initial landscaping of the Common Area of such phase with sodding, shrubbery and/or trees, shall have installed and have operational an underground irrigation system for the Common Area of such phase, and shall have installed street lights in such Common Area, all in a manner substantially comparable to those initially installed in Phase I.

Section 13.5. Quality of Construction. All future Improvements must be consistent with the initial Improvements in terms of quality of construction and must conform to the rules from time to time promulgated by the Architectural Control Committee.

ARTICLE XIV

PROPERTY RIGHTS

Section 14.1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of HPHA to suspend any enjoyment rights of any Owner for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;
- (b) The right of HPHA, in accordance with the HPHA Charter and HPHA By-Laws, to borrow money for the purpose of improve the Common Area with HPHA is to maintain;
- (c) The right of HPHA to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, transfer, or mortgage shall be effective unless an instrument signed by Members entitled to cast at least sixty-seven percent (67%) of the votes with respect thereto has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Owner not less than thirty (30) days nor more than sixty (60) days in advance of such dedication or transfer.

- (d) No conveyance or encumbrance of the Common Area shall prevent any Owner from using the Common Area for ingress and egress to such Owner's Lot.

Section 14.2. Parking. The Owners shall be entitled to use parking spaces as may from time to time be created within the Common Area, subject to such rules as may be adopted by HPHA.

Section 14.3. Additional Building. No additional buildings for permanent occupancy shall be constructed on the Common Area. This shall not prohibit the easements and parking area described above, nor the construction of recreational or community facilities.

ARTICLE XV

INSURANCE AND CASUALTY LOSSES

Section 15.1. Insurance.

- (a) The HPHA Board, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable Improvements on the Common Area. The HPHA Board shall also obtain a public liability policy covering the Common Area, HPHA, and its Members for all damage or injury caused by the negligence of HPHA or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000) limit per occurrence, and a Thirty Thousand Dollar (\$30,000) minimum property damage limit.
- (b) Premiums for all insurance on the Common Area shall be common expenses of the HPHA. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost of the Improvements. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance.
- (c) Cost of insurance coverage obtained by HPHA for the Common Area and other Improvements for which the HPHA is responsible shall be included as an assessment as provided for in Article III
- (d) The HPHA Board shall make every reasonable effort to secure insurance policies that will provide the following:
 - (i) A waiver of subrogation by the insurer as to any claims against the HPHA Board, HPHA's manager, the Owners, and their respective tenants, servants, agents, and guests;
 - (ii) A waiver by the insurer of its rights to repair and reconstruct, instead of paying cash
 - (iii) That no policy may be cancelled, invalidated, or suspended on account of the conduct of any director, officer, or employee of HPHA or its duly authorized manager without prior demand in writing delivered to HPHA to cure the defect and allowance of a

- reasonable time thereafter within which the defect may be cured by HPHA, its manager, any Owner, or mortgagee;
- (iv) That any “other insurance” clause in any policy exclude individual Owners’ policies from consideration; and
 - (v) That no policy may be cancelled or substantially modified without at least ten (10) days’ prior written notice to HPHA.
- (e) In addition to the other insurance required by this Section, the HPHA Board shall obtain, as a common expense, worker’s compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for HPHA’s funds. The amount of fidelity coverage shall be determined in months’ assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days’ prior written notice to HPHA.

Section 15.2. Individual Insurance—Repair and Reconstruction. By virtue of taking title to a Lot subject to the terms of the Declaration, each Owner covenants and agrees with all other Owners and with HPHA that each individual Owner shall carry blanket all-risk casualty insurance on the Lot and Improvements constructed thereon for full replacement cost. In the event of damage or destruction by fire or other casualty, the Owner shall, with concurrence of its mortgagee, if any, contract to repair or rebuild such damage or destroyed portions of the Improvements in a workmanlike manner in conformance with the original plans and specifications of the building (including landscaping). In the event the Owner refuses or fails to commence such repair or rebuilding within the earlier to occur of (1) thirty (30) days after receipt of insurance proceeds, or (2) one hundred eighty (180) days after the date of such damage or destruction, and thereafter to diligently prosecute the same to completion, then HPHA, by and through its officers and agents, is hereby authorized by such Owner to repair and rebuild the Improvements in a good and workmanlike manner in conformity with the original plans and specifications. The Owner shall then repay HPHA in the amount actually expenses for such repairs, and HPHA will have a lien securing the payment of same identical to that provided for in Article III, securing the payment of said sums expended and subject to the collection and enforcement provisions as set forth in said Article. Each Owner shall make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against HPHA, other Lot Owners, and their respective tenants, servants, agents and guests. Each Owner shall furnish a current certificate of insurance to HPHA.

ARTICLE XVI

TRANSFER OF CONTROL

Section 16.1. Transfer of Control. Developer will transfer control of Common Areas in each phase of the Subdivision to HPHA no later than the earlier of:

- (a) Four (4) months after seventy-five percent (75%) of the Lots in such phase have been conveyed to Owners (other than Developer); or

- (b) Five (5) years after the first Lot in such phase is conveyed to an Owner (other than Developer)

ARTICLE XVII

RESERVES

Section 17.1. Reserves Established by HPHA. HPHA will establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of Improvements to the Common Area. This fund will be maintained out of the Annual Assessments for common expenses.

Section 17.2. Working Capital Fund. To help provide HPHA with Funds for working capital, at the time the Phase Plan for each phase of the Subdivision, other than Phase I, is recorded in the Register's Office, Developer will pay into the HPHA working capital fund a one-time payment in an amount equal to two (2) months' then currently estimated Annual Assessment charges for each Lot in such phase. Any amounts so paid into the HPHA working capital fund by Developer shall, to the extent thereof, be considered a prepayment of Annual Assessments thereafter to be imposed on such Lots. As each Unsold Lot first becomes subject to Annual Assessments pursuant to the provisions of Section 3.11 hereof, HPHA shall credit the Owner of such Lot (whether Developer or an Owner other than Developer), as an advance payment against the payments of Annual Assessments next coming due, the amount of the payment which Developer has previously made into the HPHA working capital fund for such Lot. Any amount standing to the credit of Developer as a prepayment of the Annual Assessment for any Lot at the time of the conveyance of such Lot by Developer to an Owner other than Developer, shall be reimbursed to the Developer by such Owner at the closing of such conveyance.

Section 17.3. Use of Working Capital Fund. Before Developer transfers control of the Common Area to HPHA, Developer may not use any of the working capital funds to defray its expenses, reserve contributions or constructions costs or to make up any budget deficits. When Lots become subject to Annual Assessment, the amount of the Working Capital funds paid to HPHA on account of such Lots pursuant to Section 17.2 hereof, shall be transferred to the credit of the Owner of such Lots, as provided in Section 17.2 hereof.

ARTICLE XVIII

GENERAL PROVISIONS

Section 18.1. Duration and Amendment. The covenants and restrictions of the Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by HPHA, or the owner of any land subject to the Declaration, their respective legal representatives, heirs, successors, and assigns, until September 12, 2018, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive period of ten (10) year each. Unless specifically prohibited herein, the Declaration may be amended by an instrument signed by Owners holding not less than sixty-seven percent (67%) of the votes of the membership at any time. Any amendment must be properly recorded to be effective.

Section 18.2. Notices. Any notice required to be sent to any Owner or Member under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the

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

Section 18.3. Enforcement. The expense of enforcement, by HPHA, of the Restrictions and the terms and provisions of the Declaration shall be chargeable to the Owner violating the same and shall constitute a lien on such Owner's Lot, collectible in the same manner as provided in Article III for the collection and enforcement of assessments.

Section 18.4. Severability. Invalidation of any one or more of the Restrictions or of any term or provision of the Declaration by judgment or court order shall in now affect the validity of any other, which shall remain full force and effect.

Section 18.5. Waiver. No Restriction, term, or provision of the Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 18.6. Gender, Etc. Whenever in the Declaration the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

Section 18.7. Supplemental to Outline Plan. The provisions of the Declaration are in addition to, and supplemental of, the conditions or restrictions set forth on the Plat.

Section 18.8. Captions. The captions of the various Articles of the Declaration are for the convenience of reference only, and none of them shall be used as an aid in or in the construction of any provision of the Declaration.

Section 18.9. Counterparts. This instrument may be executed in multiple counterparts, all of which, taken together, shall constitute but one instrument. Alternatively, any party may execute this instrument by signing a counterpart signature page and attaching it (or causing it to be attached) to this instrument, along with the acknowledgment of the Notary Public with respect to such party's execution. Upon the attachment of all signatures and acknowledgments of all parties, this instrument shall, without further action, become effective as to all parties.

IN WITNESS WHEREOF, the Developer and the undersigned Owners have caused this instrument to be duly executed as of the day and year first above written.

RHK VENTURE, A Joint Venture

By: Halle Plantation Venture, General Partner

By: _____

David P. Halle, Jr.

General Partner

By: _____

Russel H. Kostka, General Partner

As Developer and Owner of Lots:
