

This Instrument Prepared By:
Walden Woods, LLC
120 Donelson Pike, Suite 101
Nashville, TN 37214

BOOK 11244 PAGE 105

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WALDEN WOODS

THIS DECLARATION of Covenants, Conditions and Restrictions (hereinafter referred to as "Declaration") made and published on or as of the date hereinafter set forth, by and between WALDEN WOODS, LLC, a Tennessee limited liability company (hereinafter collectively referred to as "Developer"), and any and all persons, firms, corporations or other entities, hereafter acquiring any of the within described property.

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property located in Davidson County, Tennessee, and desires to create thereon, in phases, a residential development known as Walden Woods (the "Development") with common area or open spaces for the mutual benefit of the future residents of the Development; and

WHEREAS, it is in the best interest of Developer, as well as to the benefit, interest and advantage of each and every person or other entity hereafter acquiring any of the property within the Development that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the same be established, fixed, set forth and declared to be covenants running with the land; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the real property in the Development, and for the continued maintenance and operation of common areas or open spaces; and

WHEREAS, the Developer desires to make provisions concerning the maintenance and ownership of the common areas or open spaces located therein; and

WHEREAS, the Developer has deemed it desirable, for the efficient preservation of the values and amenities in said development, and to fulfill the foregoing objects, purposes and requirements, to create entities to which should be delegated and assigned the powers of maintaining and administering the common area or open spaces, managing the affairs of the residential development, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has caused, or will cause, to be incorporated under the laws of the State of Tennessee certain non-profit corporations having as their members owners of one or more Lots within the Development, and formed for the purpose of exercising the aforementioned functions.

NOW, THEREFORE, for and in consideration of the foregoing premises, and the covenants, conditions and restrictions hereinafter set forth, the Developer declares that all of the real property hereinafter described is and shall be held, transferred, sold, conveyed and occupied subject to the following restrictions, covenants, conditions, easements, assessments and liens all of which are to be construed as covenants running with the land and which shall be binding on all parties having or acquiring any right, title or interest in the hereafter described property or any part thereof

Section 2. Restrictions on Use and Occupancy. The following use and occupancy restrictions are made a part of this Declaration and shall be binding upon all Lot Owners:

- (a) Land Use and Building Type. No Lot shall be used for other than residential purposes, provided however this shall not preclude the temporary use of a Unit by the Developer as a showcase model home or a temporary real estate sales office.
- (b) Nuisances. No noxious or offensive activity shall be carried on upon or in any Lot, or any of the Property, or any public streets shown on any Plat, nor shall anything be done thereon which may be or may become an annoyance or nuisance.
- (c) Temporary and Incomplete Structures. No temporary structure or incomplete structure may be used on the Property at any time, temporarily or permanently, as a residence likewise. No tent, shack, outbuilding, barn, camper, mobile home, motor home, basement, or dwelling not substantially completed may be used, as a residence, temporarily or permanently, provided however, that this shall not serve to prohibit the Developer from maintaining temporary structures for the purposes of a sales office, construction office and a storage facility during the period of the development and construction of the Property.
- (d) Signs. Except for signs provided by the Developer, no signs of any kind shall be displayed to the public view on any Lot except professionally lettered Builder's or Realtor's signs in good taste and not exceeding 18"x 24" in size.
- (e) Livestock, Poultry and Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot; except, dogs, cats or other household pets may be kept provided they are confined to the Lots of their owners by leash or fence, and further provided that they are not kept, bred, or maintained for any commercial purpose and are not kept in such numbers as to become a nuisance.
- (f) Garbage and Refuse Disposal. No Lot, nor any Common Area, shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall be concealed underground or screened from the view of neighbors or the public.
- (g) Clothes Lines. Clothes lines may be permitted only if located behind a dwelling and completely hidden by a masonry or wood wall from the view of neighbors or the public.
- (h) Vehicles. Junk vehicles, inoperable vehicles, unlicensed vehicles not for immediate use or vehicles of any kind in disrepair may not be kept or parked on the Property or any public street. Moreover, no Lot Owner shall permit any motor vehicles (operable or inoperable) owned by such Lot Owner (or by any person occupying his Lot or Unit or by any person on his Lot as guest or invitee) to remain parked on the public streets for more than twelve (12) hours in any week. Vehicles may not be assembled, disassembled or serviced on the Property or any public street unless completely hidden from public view. No mobile home, bus, truck of over one ton, tractor/trailer rig (separate or in combination) or house trailer may be parked or stored on the Property or any public street, (except for vehicles and equipment necessary for and being used in the development of and construction on the Property, including with the improvements thereto and located thereon and the streets and roadways serving the Property). No boat, trailer, camper or recreational vehicle shall be kept, stored or parked on the Property or any public street for more than forty-eight (48) hours in any month.
- (i) Water Supply; Sewage Disposal. No Unit on any Lot shall be occupied or used unless the same be connected and served with, water and sewage disposal from the water and sanitary sewer supply mains, if any, provided on the Property; or unless

approved septic tank facilities have been installed on the Lot with capacity sufficient to serve the Unit.

(j) Fences. No fence shall be constructed or erected on any Lot unless the design and location thereof have been approved prior thereto by the Architectural Control Committee. No fence constructed or erected on any Lot shall extend forward of the front line of the Unit on said Lot. In addition, fences on corner Lots shall not extend beyond the set back line of either street.

(k) Sight Distance at Intersection. On corner Lots adjoining two streets, no fence, wall, hedge, planting, or structure greater in height than 30 inches above the centerline grades of the intersecting streets shall be erected, placed, or maintained within the triangular area formed by the Lot lines abutting such streets and a straight line joining such Lot lines at points that are 15 feet distant from the edge of the pavement. In the case of a rounded corner at intersecting streets, such measurement shall be made from the point of intersection of the tangents of the curve constituting the rounding.

(l) Construction Within Roadways. It shall be obligatory upon all Lot Owners to construct or place any driveways, culverts, or other structures, or gradings which are within the limits of any dedicated roadways, in strict accordance with the specifications therefor, as set forth on any Plat, in order that the roads or streets which may be affected by such placement or construction may not be disqualified for acceptance into the road system of the governmental body or agency having jurisdiction over the construction of public roads. All driveway culverts must have masonry headwalls on open ends.

(m) Lot Maintenance. In the event any Lot Owner shall fail to maintain his Lot or the improvements situated thereon in a manner consistent with the provisions of this Declaration or of the Bylaws, the Association, after approval by a vote of 2/3 of its Board of Directors, 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 Unit (and any other improvements erected thereon) in accordance with the provisions of this Declaration or the Bylaws. The cost of such repair, maintenance or restoration shall be added to and become a part of the assessment to which the Lot is subject.

(n) Minimum Floor Areas Required.

(i) The ground floor area of a one story house shall be a minimum of 1,400 square feet, exclusive of the garage.

(ii) The ground floor area of a one a-half story house shall be a minimum of 900 square feet, exclusive of the garage and the total floor area shall be a minimum of 1,800 square feet, exclusive of the garage.

(iii) The ground floor area of a two story house shall be a minimum of 900 square feet, exclusive of the garage and the total floor area shall be a minimum of 1,800 square feet, exclusive of the garage.

(iv) Any other type home shall be a minimum of 1,800 square feet exclusive of the garage.

(v) Finished basement area, garage and open porches are not included in computing floor area.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Lot Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the

provisions of this Declaration. Failure by the Association, or by any Lot Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions; such other provisions shall remain in full force and effect.

Section 3. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from and after the date this Declaration is recorded; at the conclusion of such thirty (30) year term such covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of those owners then owning the Lots has been recorded prior to the expiration of said 30-year period (or any subsequent 10-year period, as the case may be) agreeing to terminate said covenants or to modify said covenants in whole or in part for the next 10-year period. This Declaration may be amended by an instrument signed by Owners representing not less than seventy-five percent (75%) of the votes of the Owners in accordance with the voting rights set forth in Section 2 of Article IV. Any amendment must be recorded in the Register's Office for Davidson County, Tennessee to be effective.

Section 4. Annexation. Additional residential property and open area may be annexed to the Property at the discretion of the Developer, and such annexed property shall be subject to the provisions of this Declaration.

Section 5. Davidson County Governmental Restrictions. Anything herein to the contrary notwithstanding, the Association shall not be dissolved nor shall it dispose of all or any portion of the common Area, by sale or otherwise (except to an organization conceived and established to own and maintain the Common Area) without first offering to dedicate such property to the Government of Nashville and Davidson County, Tennessee and said dedication be approved by the Metropolitan Planning Commission. Provided however, the conditions of any transfer shall conform to the final master development plan of the Property as adopted by the Metropolitan Planning Commission.

In the event the Association or its successor shall at any time fail to maintain the Common Area in reasonable order and condition in accordance with the adopted master development plan, the Zoning Administrator of the Metropolitan Government of Nashville and Davidson County, Tennessee may serve written notice upon the Association and/or the members and hold a public hearing on such failure. If after thirty (30) days said failure to maintain has not been corrected, the Zoning Administrator shall call upon any public or private agency to maintain the Common Area for a period of one year. If at the conclusion of said year, the Zoning Administrator determines that the Association or its successor is not prepared to assume maintenance of the Common Area, such public or private agency shall continue to provide appropriate maintenance for successive yearly periods until the Association or its successor is determined to be prepared to assume such maintenance.

The cost of such maintenance by such agency shall be assessed against the Lot Owners proportionately and shall become a lien on the Property. Provided however, said lien shall be subordinate to the lien of any first mortgage or deed of trust. However, the sale or transfer of any Lot pursuant to any mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments that become due prior to such sale or transfer.

IN WITNESS WHEREOF, the undersigned, being collectively referred to as the Developer herein, have hereunto set their hands this 9TH day of DECEMBER, 1998.

WALDEN WOODS, LLC

David H. Parker, Chief Manager
David H. Parker, Chief Manager
Elvis Lynn Wallace
Elvis Lynn Wallace, Secretary

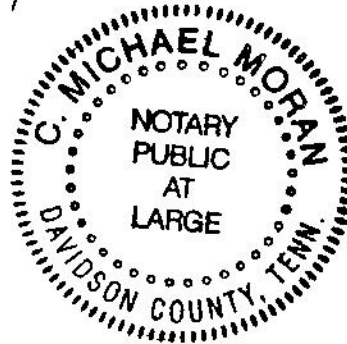
STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared David H. Parker and Elvis Lynn Wallace, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged themselves to be respectively Chief Manager and Secretary, of Walden Woods, LLC, the within named bargainor, a Tennessee limited liability company, and that as such Chief Manager and Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Tennessee limited liability company by themselves as Chief Manager and Secretary.

9th Witness my hand and seal, at office in Nashville, Tennessee, this the day of DECEMBER, 1998.

Michael Moran
NOTARY PUBLIC

My Commission Expires: 3/24/01



My Commission Expires MAR. 24, 2001

EXHIBIT "A"
(THE PROPERTY)

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The Real Estate which shall be subject to the foregoing Declaration of Covenants, Conditions and Restrictions is the land in Davidson County which shall be developed residentially by Walden Woods, LLC, a Tennessee limited liability company (referred to as "Developer" in the Declaration) and which land shall be contained within one or more phases of the Development designated as Walden Woods.

The Real Estate shown on the Plat of Walden Woods, Phase One (Phase I) is recorded in Book 9700, Page 795, in the Register's Office for Davidson County, Tennessee.

Any additional phase(s), whether consisting of property now owned by the Developer, or property annexed pursuant to the provisions of Article X, will be recorded at the appropriate time prior to commencement of construction in such phases, but all future phases shall be subject to this Declaration.

The legal description of the land presently owned by the Developer which is subject to this Declaration is as follows:

Prepared By: C. Michael Moran, RLS
535 Benzing Road
Antioch, TN 37013

LAND DESCRIPTION

Being a certain parcel of land located in the 12th Councilmanic District of Nashville-Davidson County, Tennessee; and being more particularly described as follows:

Beginning at an iron rod situated in the easterly margin of Tulip Grove Road; said iron rod being the most southwest corner of the Debbie A. Glover property as recorded in Book 7654 Page 933 RODC,Tn; said iron rod also being located along the said margin of Tulip Grove Road 500' +/- from the southerly margin of Chandler Road;

Thence, leaving the said margin of Tulip Grove Road and with Glover's southerly line and generally with an old fence line S 76°-22'-30" E - 123.66' to an iron rod;

Thence, S 81°-51'-46" E - 18.84' to an iron rod;

Thence, S 80°-13'-54" E - 187.16' to an iron rod; said iron rod being the southwest corner of the C.A. McClendon, etux property as recorded in Book 3939 Page 466 RODC,Tn;

Thence, leaving the Glover property and along the southerly line of McClendon and generally with an old fence line S 84°-20'-34" E - 417.01' to an iron rod; said iron rod being the southwest corner of the James A. Hale, etux property as recorded in Book 9273 Page 928 RODC,Tn;

Thence, leaving the McClendon property and along the southerly line of Hale and generally with an old fence line S 84°-27' E - 418.99' to an iron rod at a fence corner; said iron rod being located inn the westerly line of Melvin Hayes property as recorded in Book 4883 Page 299 RODC,Tn;

Thence, leaving the Hale property and along the said boundary line of Hayes and generally with an old fence line S 18°-23'-18" W - 288.22' to an iron rod;

Thence, S 18°-00'-36" W - 53.35' to an iron rod; said iron rod being the northwest corner of the Barbara Bethel property as recorded in Book 7218 Page 149 RODC,Tn;

Thence, leaving the hayes property and along the Bethel property line and generally with an old fence line S 18°-22'-58" W - 195.89' to an iron rod;

Thence, S 18°-51'-38" W - 85.27' to an iron rod;

Thence, S 18°-00'-01" W - 99.87' to an iron rod;

Thence, S 18°-06'-29" W - 109.45' to an iron rod at a fence corner;

Thence, N 79°-13'-19" W - 399.27' to an iron rod situated in the aforementioned easterly margin of Tulip Grove Road;

Thence, leaving the Bethel property and along the said margin of Tulip Grove Road N 41°-19'-28" W - 92.69' to an iron rod;

Thence, in a northwesterly direction with a curve to the left having a radius of 312.88' an arc distance of 103.05' (chord =

Thence, in a northwesterly direction and with a curve to the right having a radius of 497.117' an arc distance of 417.19' (chord =

N 19°-05'-03" W - 405.06') to an iron rod;

Thence, N 04°-57'-28" E - 66.29' to an iron rod;

Thence, N 41°-54'-02" E - 14.58' to the POINT OF BEGINNING.

Containing 18.85 Acres (820,979 SF).

Being the same property conveyed to Wallace Realty Development, LLC as evidenced in Book 10187 Page 658 RODC,Tn.

EXHIBIT "B"
(COMMON AREA)

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That area designated as Common Area on the Plat of Walden Woods,
Phase **1**, Book 9700, Page 795, Register's Office for Davidson County, Tennessee
and any area designated as Common Area in subsequent phases and/or additional land
annexed pursuant to Article X.

and which shall inure to the benefit of each owner thereof. Every person or other party hereafter acquiring any of the within described property made subject to this Declaration, by acceptance of a deed to any interest in or to said property, shall take such property interest subject to this Declaration and to the terms and conditions hereof, and shall be deemed to have assented to same.

ARTICLE I **DEFINITIONS**

The following words, when used herein, shall have the following meanings:

Section 1. The "Association" shall mean Walden Woods Homeowners' Association, a Tennessee not-for-profit corporation, its successors and assigns, organized by the Developer for the purpose of owning and maintaining the Common Area and which has as its members every Lot Owner subject to assessment as hereinafter provided. The Bylaws of the Association are attached hereto as Exhibit C and are incorporated herein by reference.

Section 2. "Common Area" shall mean all real property (including the improvements located thereon or attached thereto) owned and maintained by the Association for the common use and enjoyment of the Lot Owners and designated on any recorded plats or plans of the Property as "Open Space" or "Common Area(s)". The Common Area to be owned by the Association at the time of conveyance of the first Lot is described more fully on Exhibit B.

Section 3. "Declaration" shall mean this instrument.

Section 4. "Developer" shall mean Walden Woods, LLC, its heirs, successors and assigns, provided such heirs, successors and assigns are designated in writing by the Developer as a successor or assign of the rights of the Developer as set forth herein.

Section 5. "Lot" shall mean any lot shown on any recorded plats or plans of the Property. The term Lot shall not include Common Area, or dedicated streets and roadways.

Section 6. "Lot Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Unless specifically provided otherwise herein, Developer shall be deemed a Lot Owner so long as it is the legal title holder of any Lot.

Section 7. "Unit" shall mean and refer to a building situated upon any Lot designated and intended for use and occupancy as a residence by a single family.

Section 8. "Plat" shall mean the plat of Walden Woods, of record in the Register's Office for Davidson County, Tennessee in Plat Book 9700, page 795, any amendments to such plat, and such other plats as are submitted to this Declaration pursuant to the provisions of Article X.

Section 9. "Property" shall mean the real property submitted to this Declaration and described on Exhibit A attached and incorporated herein by reference, and such other property as may be submitted to this Declaration pursuant to the provisions of Article X. The Property shall not include any public streets and roadways included within a Plat.

ARTICLE II
PROPERTY SUBJECT TO
DECLARATION AND SUPPLEMENTAL DECLARATION

Section 1. Property Subject to this Declaration. Developer hereby declares that the Property shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions of this Declaration, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, and their heirs, devisees, executors, administrators, successors, and assigns.

ARTICLE III
GENERAL PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Lot Owner shall have a right and easement of enjoyment in and to the Common Area that shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to suspend the voting rights of and right to use of the recreational facilities by a Lot Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association;
- (c) The right of the Association 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 or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been signed by members comprising at least two-thirds (2/3) of the votes of the members of the Association, and has been recorded. Upon any such dedication or transfer, the portion of the Common Area so dedicated or transferred shall no longer be a part of the Common Area and Lot Owners shall thereafter have no greater right in the property so dedicated or transferred than does the general public;
- (d) The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;
- (e) The right of the Association to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it may deem necessary for the proper servicing and maintenance of the Common Area and the structures in the Development;
- (f) The right of Developer, at its sole expense, to relocate, expand, modify, reduce, extend, or construct utility lines, sewers or service connections in order to serve the Property.

Section 2. Delegation of Use. Any Lot owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment of the Common Area and facilities to the family members, tenants, or contract purchasers who reside on the Lot.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Lot Owner who is subject to assessment by the Association as hereinafter provided shall be a member of the Association. Membership shall be appurtenant to and may not be separated from, ownership of any Lot that is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Lot Owners, (with the exception of the Developer) and each owner shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, and the vote for such Lot may be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot, regardless of how many members have an interest in that Lot.

Class B. The Class B members shall be the Developer and any assignee of the Developer to whom such rights have been assigned as provided under this Declaration. A Class B member shall be entitled to three (3) votes for each Lot owned including any Lots added pursuant to the provisions of Article X, Section 4 hereof. The Class B membership shall be converted to Class A membership while the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership. In the event the Developer annexes additional land as permitted under Article X, Section 4, the Developer will have three (3) votes for each Lot owned in the annexed Land and Developer's three (3) votes for each Lot owned in the land already subject to this Declaration will be reinstated for so long as the total votes of the Class B member (Developer) exceeds the total votes of the Class A members. Anything to the contrary notwithstanding, on December 31, 2003 (or any date prior thereto that the Developer declares) the Class B membership is to be terminated by a written instrument submitted to the Association.

ARTICLE V COVENANT FOR ASSESSMENTS FOR THE ASSOCIATION

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Lot owned within the Property and each owner of any Lot by acceptance of a deed therefor, whether or not is shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made from the date when due until the same is paid in full or otherwise discharged. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Lot Owner at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title of said person unless expressly assumed by such successor in writing.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively: to promote the recreation, health, safety and welfare of the Lot Owners; to provide for the maintenance of the Common Area (including, but not limited to drainage facilities, lawn maintenance, walkways, landscaping, recreational facilities, etc.); to pay the fees of any management agent the Association may employ to manage the affairs of the Association; and, to pay other reasonable and necessary expenses of the Association. An adequate reserve fund for the maintenance, repair and replacement of items maintained by the Association pursuant to

this section shall be established and shall be funded by regular monthly payments rather than by special assessments.

Section 3. Maximum Annual Assessment.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to a Lot Owner (other than Developer) the maximum annual assessment shall be One Hundred Eighty and No/100 Dollars (\$180.00) per Lot payable in equal monthly installments on the first day of each month of \$15.00 each.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to a Lot Owner, the maximum annual assessment may be increased each year without a vote of the Association membership by the Board of Directors by an amount not to exceed ten percent (10%) of the previous year's maximum annual assessment.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to a Lot Owner, the maximum annual assessment may be increased above the percentage in item "b" (above) only by a two-thirds (2/3) vote of the Association whose members, are voting in person or by proxy at a meeting duly called for this purpose based upon the voting rights set forth in Section 2 of Article IV.

(d) The Board of Directors of the Association shall fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment to pay, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Association members, who are voting in person or by proxy, at a meeting duly called for this purpose based upon the voting rights set forth in Section 2 of Article IV.

Section 5. Notice and Quorum for Any Action Authorized Under

Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article V shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than ninety (90) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and special assessments may be collected on a monthly basis as is required for annual assessments.

Section 7. Date of Commencement of Annual Assessments Due.

The annual assessments may commence at any time after 75% of the Lots have been deeded to a Lot Owner other than the Developer or Builder. Assessments as to Lots owned by the Developer shall commence at the same time unless Developer chooses to begin earlier. As to Lots owned by the Developer, the annual assessments shall commence as to each Lot when the improvements constructed on the Lot are completed and the unit is ready for occupancy. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Lot Owner subject thereto. The

assessment shall be paid monthly on the first day of each month by every Lot Owner. The assessments shall be collected by the Association and shall be remitted to the Association monthly by the tenth day of each month. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be subject to a late charge in an amount established by the Board of Directors of the Association and shall bear interest from the due date at the maximum rate allowed by applicable law. The Association may bring an action at law against the Lot Owner personally obligated to pay the assessment, or foreclose the lien against the Lot and there shall be added to the amount of such assessment the costs, including reasonable attorney's fees, of bringing such action or foreclosure. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments on any Lot provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed on the Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments that become due prior to such sale or transfer. No sale or transfer shall relieve liability for any assessment as to payments that become due after such sale or transfer, or any lien therefor.

Section 10. Assessments on Lots. Anything to the contrary herein notwithstanding, the annual assessments provided for herein shall commence as to each Lot only when the Unit constructed on such Lot is completed and ready for occupancy, unless and until the Developer in a writing submitted to the Association, elects to pay assessments for each Lot owned by the Developer in the same amount and manner as other Lot Owners.

ARTICLE VI ARCHITECTURAL CONTROL

No building, fence, wall, outside antenna, satellite dish (greater than 24" in diameter) or other structure shall be commenced, erected or maintained upon a Lot, nor shall any Lot Owner alter or add to the Unit and the appurtenances on the Lot if such alteration or addition (other than interior decorations) would change the external appearance of the Unit and the appurtenances as installed by the Developer on the Lot; nor shall any Unit be constructed on any Lot other than by the Developer, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same or the exterior paint color thereof, have been submitted to and approved in writing as to harmony of external design, location and color in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural committee composed of three (3) or more representatives appointed by said Board of Directors. Alterations or additions which must be approved as provided herein include, by way of illustration and not limitation, exterior painting (other than ordinary maintenance of existing color), addition of storm windows and doors, moving or altering the privacy fence, changing exterior lighting, building a swimming pool, garage or gazebo, etc.

Approval will not be required and this Article will be deemed to have been fully complied with, in the event said Board of Directors, or its designated architectural committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it and the

Owner has received a written receipt reflecting such submission to said Board of Directors or architectural committee.

Work done by the Developer on the Property shall not be subject to the provisions of this Article VI.

ARTICLE VII INSURANCE

Section 1. Common Area. The Association shall maintain and keep in force such hazard, public liability, or other real or personal insurance as it shall deem necessary relating to the Common Area. The Association may also insure any other property owned by it against such hazards as may be deemed desirable by the Association. Premiums for all insurance carried by the Association shall be part of the expenses covered by the annual assessments of the Association.

Section 2. Lots. It shall be the sole responsibility of the individual Lot owners to provide their own insurance against damage by fire or other casualty to the improvements on any Lot; liability insurance with respect to occurrences on any Lot; and any other insurance relating to their Lot.

Section 3. Fidelity Bonds. Blanket fidelity bonds shall be maintained by the Association for all officers, directors, trustees and employees of the Association handling, or responsible for, the funds of, or administered by, the Association. Further, in the event the Association chooses to delegate some or all of the responsibility for the handling of funds to a management agent, such agent shall maintain a blanket fidelity bond for officers, employees and agents of such management agent handling, or responsible for, the funds of or administered on behalf of the Association.

(a) The total amount of fidelity bond coverage shall be based upon the best judgment of the officers of the Association but shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bond be less than a sum equal to three (3) month's aggregate assessment on all Lots plus reserve funds.

(b) All such fidelity bonds shall:

(i) Name the Association as an obligee;
(ii) Contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;

(iii) Provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association; and

(c) Have their premiums paid (except premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) by the Association as a common expense.

Section 4. Other Insurance. The Association may also obtain such other insurance as the Board of Directors deems desirable, in such amounts, from such sources and in such forms as it seems desirable, insuring the Common Area owned and maintained by the Association and insuring each member of the Board and officer of the Association, and each member of any committee appointed pursuant to the Bylaws of the Association, from liability arising from the fact that said person is or was a director or officer of the Association, or a member of such a committee. The premiums for such insurance and bonds shall be a common expense of the Association.

Unpaid officers and Directors of the Association shall not be liable to any Lot Owner for any act or omission unless the act or omission constitutes gross negligence or willful misconduct. If an unpaid Director or officer of the Association prevails in any legal action brought against him in his official capacity by a Lot Owner, that Lot Owner shall pay such Director or officer all reasonable legal fees incurred in defending such legal action (unless paid by insurance or other means). Such legal fees shall become a charge on such Lot Owner's Lot until paid or otherwise discharged.

ARTICLE VIII **NOTICES TO MORTGAGEES, ETC.**

Upon written request to the Association identifying the name and address of the holder, insurer, or guarantor of any deed of trust lien on the Property, or a Lot located therein (and in the case of a Lot, the Lot number or address) any such lien holder or eligible insurer or guarantor shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which effects a material portion of the Property or a Lot located therein, on which there is a first deed of trust lien held, insured, or guaranteed by such eligible deed of trust lien holder or eligible insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by an Owner subject to a first deed of trust lien held, insured, or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of deed of trust lien holders.

ARTICLE IX **EASEMENTS AND RESTRICTIONS**

Section 1. Easements. In addition to and without limitation of, any other easements or rights reserved elsewhere in this Declaration, the following rights and easements are hereby reserved, and the property and each individual Lot thereon is hereby made subject to the following restrictions.

(a) Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on any Plat and as otherwise shown by the public records. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Lot Owner, except for those improvements for which a public authority or utility company is responsible.

(b) Easements are reserved as shown on any plat and as otherwise shown by the public records for the purpose of permitting underground wires or cables of public utilities, such as electric, telephone, telegraph, cable television, etc.

(c) Each Lot Owner shall be required to grant such easements upon the Lot as are necessary to serve the Property for water, sewer, telephone, gas, electricity and other utilities, and for the erection and maintenance of the necessary poles and other equipment, wires and conduits, sewer and water lines, on, above or below any Lot; provided however, no Lot Owner shall be required to grant any easement which would

constitute an unreasonable interference with the use and enjoyment of his Lot or Unit and any easement granted hereby shall impose on the grantee of said easement the obligation to (a) maintain said easement so that the use thereof will not unreasonably interfere with the use and enjoyment of any Lot or Unit and (b) repair and restore that portion of any Lot upon which the easement is located to its original condition or as near as possible to its original condition.

(d) Until completion of Developer's intended development of the Property, an easement is reserved to the Developer for ingress and egress generally across the Property, including any Lot, at reasonable places, for the purpose of completing Developer's intended development of the Property, provided that said easement shall be reasonable and shall not prevent the construction of improvements on a Lot nor the use and enjoyment of a Lot by a Lot Owner.

(e) Until completion of Developer's intended development of the Property, an easement is reserved to the Developer to enter the Common Area and to maintain thereon such facilities and perform such operations as in the sole opinion of the Developer may be reasonably required, convenient or incidental to the intended development of the Property by the Developer, including without limitation, a business office, sales office, storage area, construction yards, signs and Model units.

(f) An easement is granted and reserved to the Association, its officers, agents, employees, including employees of any management company having a contract with the Association, over and upon the Common Area to perform the duties of maintenance and repair of the Common Area, to maintain any utilities for which an easement has been granted and to prevent damage to the Common Area or any Lot or Unit situated thereon.

(g) In accordance with the specifications of the governmental body or agency having jurisdiction over the construction of public roads, the right is expressly reserved to the Developer, to construct all streets, roads, alleys, or other public ways as now, or hereafter may be, shown on any Plat, at such grades or elevations as Developer in its sole discretion may deem proper for the purpose of constructing such streets, roads, alleys or public way. The Developer shall also have an easement, not exceeding ten (10) feet in width, upon and along each adjoining Lot, for the construction of proper bank slopes. No Lot Owner shall have any right of action or claim for damages whatsoever on account of the grade elevation at which such road, street, alley or public way may hereafter be constructed, or on account of the bank slopes constructed within the limits of the said ten (10) foot easement.

(h) The Developer reserves the right to build recreational facilities (to be determined solely by Developer) upon any Common Areas and any Common Areas annexed or amended pursuant to Article X Section 4. Said facilities shall become the property of the Association. The Developer reserves all rights of ingress and egress onto the Common Areas as may be necessary to construct said facilities.

(i) Each Lot and any Common Area shall be subject to and there is hereby reserved, an easement for encroachments created by construction, settling, shiftings, engineering errors or overhangs for all buildings or other improvements constructed by the Developer, its agents, contractors or employees, and any maintenance, repair, correction or alteration of the same.

(j) The right of the Developer to subject the Common Area to such easements for access, ingress, egress, utilities and Greenway access and use, as may be necessary, or as may be required by any governmental body or agency having jurisdiction over the Property, to serve other phases or subphases of the Development.

(k) If access, ingress or egress to or from any Lot is necessary through any Common Area, an easement across the Common Area at reasonable places is reserved to the Lot Owner for the purpose of access, ingress or egress to or from such Lot.