

THIS INSTRUMENT
PREPARED BY
C. THOMAS CATES
ATTORNEY AT LAW
130 N. COURT
MEMPHIS, TENN. 38103

S4 4074
51

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

"VILLAGES OF BENNINGTON"

CONTENTS

DECLARATION AND WITNESS:

ARTICLE I: DEFINITIONS

ARTICLE II: PROPERTY AND EASEMENTS SUBJECT TO THIS DECLARATION

ARTICLE III: RIGHT OF THE DEVELOPER TO DESIGNATE ADDITIONAL
PROPERTY THAT SHALL BE SUBJECT TO THE TERMS HEREOF

ARTICLE IV: THE CONSERVANCY

- 4.1 MEMBERSHIP
- 4.2 VOTING AND VOTING RIGHTS
- 4.3 SECURED PARTIES
- 4.4 ORGANIZATIONAL MEETING

ARTICLE V: COMMON AREA

- 5.1 DESIGNATION
- 5.2 RIGHTS AND RESTRICTIONS
- 5.3 DELEGATION OF USE

ARTICLE VI: COVENANTS FOR MAINTENANCE ASSESSMENTS

- 6.1 PURPOSE
- 6.2 ASSESSMENTS
- 6.3 EXEMPTIONS
- 6.4 RATES AND APPLICATION
- 6.5 MAXIMUM ANNUAL ASSESSMENT
- 6.6 SPECIAL ASSESSMENTS
- 6.7 LIMITED ASSESSMENTS
- 6.8 NOTICE AND QUORUM
- 6.9 DATE OF COMMENCEMENT OF ASSESSMENTS DUE DATES
- 6.10 FINES
- 6.11 DELINQUENT PAYMENT
- 6.12 LIENS AND PERSONAL OBLIGATIONS
- 6.13 ENFORCEMENT OF LIEN
- 6.14 A LIEN RUNNING WITH THE LAND
- 6.15 WRITTEN STATEMENT UPON REQUEST

SA 4074

ARTICLE VII: LAND USE AND ARCHITECTURE CONTROL COMMITTEE

- 7.1 PURPOSE
- 7.2 ORGANIZATION
- 7.3 PROCEDURES
- 7.4 MAJORITY VOTE
- 7.5 WRITTEN RECORDS
- 7.6 LIABILITY WAIVER
- 7.7 REVIEW BY COMMITTEE

ARTICLE VIII: GENERAL RESTRICTIONS AND COVENANTS

- 8.1 APPLICABILITY
- 8.2 USE
- 8.3 STRUCTURES AND LANDSCAPING

ARTICLE IX: RESIDENTIAL RESTRICTIONS AND COVENANTS

- 9.1 APPLICABILITY
- 9.2 USE
- 9.3 STRUCTURES AND LANDSCAPING

ARTICLE X: NON-RESIDENTIAL RESTRICTIONS AND COVENANTS

- 10.1 APPLICABILITY
- 10.2 USE
- 10.3 STRUCTURES AND LANDSCAPING
- 10.4 COMMERCIAL BUILDINGS
- 10.5 OFFICE AND INSTITUTIONAL BUILDINGS
- 10.6 INDUSTRIAL BUILDINGS

ARTICLE XI: GENERAL PROVISIONS

- 11.1 DURATION
- 11.2 AMENDMENTS
- 11.3 ENFORCEMENT
- 11.4 NOTICE
- 11.5 INVALIDATION BY COURT ORDER
- 11.6 SINGULAR, PLURAL AND GENDER

S4 4074

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

"VILLAGES OF BENNINGTON"

THIS DECLARATION is made, published and declared this 29th day of April, 1981, by and among Whitehead Properties, Inc., a corporation organized and existing under the laws of the State of Tennessee, (the "Developer") and any and all persons, partnerships, corporations or other forms of entity hereafter acquiring any of the within described property.

W I T N E S S

WHEREAS, the Developer is the fee simple owner of a certain tract of real property in Shelby County, Tennessee, which property is particularly described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the Developer has caused to be prepared a plan under which the Property ultimately will be subdivided into

- (a) single family residential lots (the "Lots"),
- (b) parcels upon which multifamily residential dwellings may be situated (the "Parcels"), and
- (c) tracts upon which improvements for non-residential uses may be situated (the "Tracts"), and
- (d) certain areas held in common (the "Common Area"), for the use, benefit and enjoyment of the owners of the Lots (the "Lot Owners"), the owners of the Parcels (the "Parcel Owners"), the dwellers in the improvements on the Parcels (the "Dwellers"),

54 4074

and the owners of the Tracts (the "Tract Owners") in common with each other -- all of which shall be known as "Villages of Bennington"; and

WHEREAS, the Developer will cause a plan of the Property to be filed in the Register's Office of Shelby County, Tennessee pursuant to which the Property shall be developed as a planned unit development under applicable law; and

WHEREAS, it is to the benefit, interest and advantage of the Developer, the Lot Owners, the Parcel Owners, the Dwellers and the Tract Owners and of each and every person or other entity hereinafter acquiring any interest in the Property that certain covenants, restrictions and provisions for assessments and liens governing and regulating the use and occupancy of portions of the Property be established, fixed, set forth and declared as covenants running with the land;

NOW, THEREFORE, in consideration of the premises, the Developer does hereby publish and declare that any portion of the Property described on Exhibit "A" hereto that is later subdivided by the filing officially of a Final Phase Plan (as defined hereinafter) which bears thereon reference to the Register's Number of Shelby County, Tennessee under which this instrument is recorded shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to in furtherance of a plan for the development and improvement of the said Property which shall be subjected hereto, and the said covenants, conditions, restrictions, uses, limitations and obligations shall run with the land which is subjected hereto and shall be a burden and a benefit to the Developer, its successors and assigns, and any person or legal entity acquiring or owning any interest in any portion of the Property which is subjected hereto or any improvements thereon, their grantees, successors, heirs, executors, administrators, devisees, assigns and lessees.

ARTICLE I
DEFINITIONS

The following words or phrases, when used in this Declaration or any amendment or supplement thereto, unless the definitions of any such words or phrases are later specifically amended or unless the context shall prohibit, shall have the following meanings:

1.1 "Property" shall mean the real property described on Exhibit "A" hereto, portions of which may be subject to this Declaration or any Supplemental Declaration and such property shall be known as the "Villages of Bennington". Unless the context

S4 4074

clearly requires, when the word "Property" is used herein it shall refer only to those portions thereof that are designated on their respective Final Phase Plans as being subject to the terms hereof.

1.2 "Conservancy" shall mean the Villages of Bennington Property Owners Conservancy, a Tennessee non-profit corporation, a copy of the Charter of which is attached hereto as Exhibit "B", its successors or assigns, which Conservancy shall have as its members all of the owners of Lots and Parcels and Tracts within the Property and which Conservancy shall be responsible for the care, management and supervision of the Common Area within the Property.

1.3 "By-Laws" shall mean and refer to the By-Laws (rules and regulations governing the operation) of Villages of Bennington Property Owners Conservancy which are attached hereto as Exhibit "C" and which may be amended from time to time.

1.4 "Common Area" shall mean all real property designated by either the term "Common Area" or the term "Community Open Space" on any Final Phase Plan filed officially for the purpose of subdividing the Property.

1.5 "Declaration" shall mean this document.

1.6 "Developer" shall mean Whitehead Properties, Inc., a Tennessee corporation, its successors or assigns.

1.7 "Dweller" shall mean a person that inhabits a multi-family dwelling situated on a Parcel.

1.8 "Final Phase Plan" shall mean that document or documents officially filed on record in the Register's Office of Shelby County, Tennessee, which are required under applicable law to be so filed, to establish and make of public record, among other things, the boundary lines of the real estate encompassed therein, the boundary lines of the Lots, Parcel and Tracts as shown thereon, the boundary lines of the Common Areas as shown thereon, roads or streets within the Property as shown thereon, easements and planting screens as shown thereon and certain restrictions and conditions relating to the Property encompassed therein as set forth thereon. As indicated on the second page hereof the Developer will file a preliminary or general planned unit development plan in said Register's Office. As development under said plan progresses there will be filed for each phase to be accomplished in accordance with the preliminary or general plan a Final Phase Plan.

1.9 "Lot" shall mean any plot of land as shown on any Final Phase Plan of the Property upon which improvements for a single family residence (attached or detached) may be situated.

54 1074

1.10 "Lot Owner" shall mean any person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, including the Developer, who owns a Lot within the Property upon which a single family residence may be constructed, but excluding any person or legal entity having any interest in any lot solely as security for the performance of any obligation.

1.11 "Parcel" shall mean any plot of land as shown on any Final Phase Plan of the Property upon which improvements for multi-family dwellings may be situated.

1.12 "Parcel Owner" shall mean any person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, including the Developer, who owns any Parcel of the Property upon which improvements for multifamily dwellings may be constructed, but excluding any person or legal entity having any interest in any Parcel solely as security for the performance of an obligation.

1.13 "Private Street" shall mean any street so designated on any recorded Final Phase Plan of the Property, and with respect thereto, the owners of Lots or Parcels or Tracts served thereby shall be jointly responsible for the maintenance thereof and shall be considered to own an undivided interest therein.

1.14 "Subdivide" shall mean to designate and establish the boundary lines of any of the Property by officially filing in the Register's Office of Shelby County, Tennessee a Final Phase Plan.

1.15 "Tract" shall mean any plot of land as shown on any recorded Final Phase Plan of the Property upon which non-residential improvements may be situated.

1.16 "Tract Owner" shall mean any person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, including the Developer, who owns any Tract of the Property which improvements for non-residential use or uses may be situated, but excluding any person or legal entity having any interest in any Tract solely as security for the performance of an obligation.

ARTICLE II

PROPERTY AND EASEMENTS SUBJECT TO THIS DECLARATION

2.1 The real property which may be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to this Declaration is located in Shelby County, Tennessee, and is fully described on Exhibit "A" which is attached hereto as part of this Declaration.

2.2 Easements for the installation, operation and maintenance of utilities, fences, drainage facilities, planting screens and berms and for access control to public streets shall be granted by the Developer and shall be shown on the Final Phase Plans relating to phases of the entire planned unit development

of the Property; and the conveyance of any of the Property shall be made subject to such easements. From time to time the Conservancy may grant additional easements for similar purposes over the Common Area.

ARTICLE III

RIGHT OF DEVELOPER TO DESIGNATE ADDITIONAL PROPERTY THAT SHALL BE SUBJECT TO THE TERMS HEREOF

The real estate that may be subject to the terms of this Declaration is within the bounds of that described on Exhibit "A" hereto (the "Property"). However, it is anticipated that the Developer may in the future develop and improve other real estate in the vicinity of the Property. In the sole discretion of the Developer, if such property is developed, then the Developer may subject same to the provisions of this Declaration by filing officially an amendment hereto describing the real estate to be so subject and all owners of such real estate and parts thereof shall be members of this Conservancy and such property shall be included within this Conservancy.

ARTICLE IV

THE CONSERVANCY

4.1 Membership. Every person or entity who is the owner of record of a fee interest in any Lot, Parcel or Tract shall be a member of the Villages of Bennington Property Owners Conservancy and be subject to and bound by this Declaration of Covenants, Conditions and Restrictions, by the By-Laws of the Conservancy and by such rules and regulations as may be adopted by the Conservancy.

4.2 Voting and Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of a Lot or Parcel or Tract, there to be one (1) vote for each Lot or Parcel or Tract, except that the Developer shall be entitled to three (3) votes for each Lot or Parcel or Tract which it owns and which is officially subdivided at the time of the vote, and ten (10) votes for each acre of land within the boundaries of the Property that has not at the time of the vote been officially subdivided into Lots or Parcels or Tracts. When any Lot or Parcel or Tract is owned of record in joint tenancy, tenancy in common, tenancy by the entirety, or in some other legal interest, the membership as to such plot of land shall be joint but the voting power arising from such membership shall be exercisable by only one of such owners as proxy or nominee for all persons holding an interest in said plot. Except as provided to the contrary herein, no more than one vote shall be cast with respect to any Lot, Parcel or Tract. If the joint owners disagree as to which of them shall cast the vote relative to such membership, then none of them may vote, but if such plot is represented at a meeting,

its representative shall be counted for quorum purposes.

4.3 Secured Parties. No individual or legal entity holding title to a Lot or a Parcel or a Tract as security for any debt or obligation shall be considered as owner of such Lot, Parcel or Tract, and such individual or entity shall not be entitled to membership in the Conservancy or to cast a vote on any questions or matter affecting the Conservancy.

4.4 Organizational Meeting. The Conservancy membership shall hold an organizational meeting at the call of the Developer, but no later than within thirty (30) days after the sale and conveyance of 500 Lots within the Property or January 1, 1983, whichever period in time shall be earlier. The organizational meeting of the Conservancy membership shall be held for the purposes of electing a Board of Directors and appointing and funding a Land Use and Architecture Control Committee and establishing procedures for the proper functioning of the Conservancy.

ARTICLE V

COMMON AREA

5.1 Designation. The Common Area(s) shall be clearly delineated as either "Common Area" or "Community Open Space" on all Final Phase Plan(s) filed for the Property.

5.2 Rights and Restrictions. Every Lot Owner, Parcel Owner, Dweller and Tract Owner shall have a right of easement to and enjoyment in the Common Areas. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, Parcel, and Tract with respect to their Owners and with the right of occupancy in the improvements on a Parcel with respect to a Dweller, subject to the following restrictive provisions:

(a) The right of the Conservancy to suspend the rights of enjoyment and use of the Common Area by any Lot Owner, Parcel Owner, Dweller or Tract Owner for a period not to exceed sixty (60) days without reconsideration for any violation of the Conservancy's published rules and regulations; (b) The right of the Conservancy to levy fines due to acts of a Lot Owner, Parcel Owner, and Tract Owner or their guests or invitees, which shall be a lien against the property of the Lot Owner, Parcel Owner and Tract Owner to the extent and with full powers of enforcement as provided in Article VI herein; (c) The power of the Conservancy to suspend the use of any of the Common Area by a Lot Owner, a Parcel Owner, a Dweller or a Tract Owner while any fine or assessment against such owner's Lot, Parcel or Tract remains delinquent and unpaid; and (d) The right of the Conservancy to limit the use of the recreational facilities on the Common Area to a certain number of persons employed by Tract Owners; and (e) The right of the Conservancy to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for appropriate purposes and subject to such conditions

S4 4074

as may be approved by the membership of the Conservancy. No such dedication or transfer shall be effective without the affirmative vote of at least two-thirds (2/3) of the votes cast on the proposition proposed; and (f) The right of the Conservancy, acting through its Board of Directors, to mortgage all or any part of the Common Area as security for the repayment of funds borrowed by the Conservancy under the provisions of the By-Laws or the Charter of the Conservancy and used for the purpose of capital improvements to the Common Areas. No such loan shall be negotiated or mortgage executed without the written approval of at least four (4) directors entitled to vote. Membership approval shall not be necessary.

5.3 Delegation of Use. Any Lot Owner, Parcel Owner, Dweller or Tract Owner may delegate, in accordance with the By-Laws of the Conservancy, his right of enjoyment to the Common Areas and facilities to the members of his family who reside on the Property and to his guests, provided, that, such delegation shall be subject to any rules and regulations of use and enjoyment as may be established from time to time and uniformly applied by the Conservancy.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 Purpose. The assessments levied by the Conservancy shall be used exclusively for the recreation, health, safety and welfare of the residents of the Property and the Tract Owners and for the capital improvement and the maintenance of the Common Areas.

6.2 Assessments. Each Lot Owner, Parcel Owner and Tract Owner, other than the Developer, by acceptance of a deed for a Lot or Parcel or Tract, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Conservancy: (a) An annual Assessment or charge as may be levied by the Board of Directors of the Conservancy as hereinafter provided; and (b) Special Assessments for capital improvements as may be established by the Board of Directors of the Conservancy as hereinafter provided; and (c) Limited assessments for capital improvements on a specific Lot, Parcel, or Tract as may be established by the Board of Directors of the Conservancy as hereinafter provided.

6.3 Exemptions. No Lot, Parcel or Tract owned by the Developer nor any part of the Property owned by the Developer shall be subject to assessment at any time by the Conservancy for any purpose, but this provision shall in no way limit the Developer's right to vote as a member of the Conservancy so long as the Developer shall own any part of the Property. Further, all Common Area(s) shall be exempt from assessment by the Conservancy.

S4 4074

6.4 Rates and Application. Both Annual and Special Assessments shall be established as follows: (a) A uniform rate shall first be established for all Lots; (b) The rate for each Parcel shall then be determined by multiplying the Annual or Special Assessment established for each Lot by a fraction, the denominator of which shall be four (4) and the numerator of which shall be the number of dwelling units situated on the Parcel for which the calculation is being made; (c) The rate for each Tract shall then be determined by multiplying the rate established for each Lot by the number of acres in each Tract; (d) The rate for Lots, Parcels, or Tracts with direct access to (frontage on) a Common Area shall pay twice the normal rate for such a Lot, Parcel, or Tract as described above.

The Board of Directors of the Conservancy, in its discretion, may provide for the installment payment of such assessments.

6.5 Maximum Annual Assessment. (a) Until January 1 of the year immediately following the organizational meeting of the Conservancy, the maximum annual assessment shall not exceed Two and 00/100 (\$2.00) Dollars per Lot per month for Lots and Two Dollars per acre for Parcels and Tracts per month calculated on the basis of twelve (12) calendar months. (b) From and after January 1 of the year immediately following the organizational meeting of the Conservancy, the Annual Assessment may be increased to the maximum described hereinabove or each year by the Board of Directors of the Association no more than ten (10%) per cent above the Annual Assessment for the previous year without first obtaining the affirmative vote of two-thirds (2/3) of the votes of the members of the Conservancy who are voting in person or by proxy at a meeting duly called for this purpose. (c) Annual Assessments not in excess of the maximum allowable assessments as provided hereinabove shall be levied by the Board of Directors by action taken in accordance with the provisions of Section 4 of this Article.

6.6 Special Assessments. In addition to the Annual Assessments authorized hereinabove, the Conservancy may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, 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 members of the Conservancy who are voting in person or by proxy at a meeting duly called for this purpose. The due date and method of payment (which may be in installments) of such Special Assessment shall be determined by the Board of

S4 4074

Directors of the Conservancy at the time such assessment is levied.

6.7 Limited Assessments. In the following instances the Board of Directors of the Conservancy may impose a limited assessment applicable to a specified Lot, Parcel, or Tract of an Owner and such shall be a lien upon such Lot, Parcel or Tract carrying with it all the rights and duties as specified hereinabove in relation to annual assessments and capital assessments, to-wit: (a) When the need for maintenance or repair of the Common Area is caused due to the fault of a Lot Owner, Parcel Owner, his family, guests or invitees, the Dweller on a Parcel or his family, guests or invitees, or the owner of a Tract or his guests or invitees, or (b) when, thirty (30) days after written notice to a Lot Owner, Parcel Owner or Tract Owner, the Board of Directors incurs expenses in providing maintenance to the grounds of a Lot, Parcel or Tract owned by such owner, or to the structures thereon, including but not limited to clearing, mowing, and trimming trees, shrubs and hedges, or (c) when the Owners in a neighborhood, block, area, or any group request a capital improvement specific to such neighborhood, block, area or group of owners.

6.8 Notice and Quorum. Written notice of any meeting for the purpose of taking any action authorized under sections 5 or 6 or 7 (c) hereinabove shall be sent to all members of the Conservancy, or in the case of a Limited Assessment pursuant to section 7 (c) above to all affected members of the Conservancy not less than 10 days nor more than 60 days in advance of such meeting. At the first such meeting called, the presence of persons holding, personally or by proxy, fifty (50%) per cent of the entire number of votes that may be cast at the meeting shall constitute a quorum. If the required quorum is not present, the Board of Directors of the Conservancy may call another meeting subject to the same notice requirements provided herein, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held less than ten (10) nor more than sixty (60) days following the preceding meeting.

6.9 Date of Commencement of Assessments Due Dates. The Annual Assessments provided for herein shall commence for all Lots, Parcels and Tracts which are subject thereto on the first day of the month immediately following the organizational meeting of the association as provided in Article IV, Section 4. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year in which the first assessment is levied. For subsequent years, the Board of Directors shall fix the amount of the Annual Assessment according to the provisions

S4 4074

hereinabove at least sixty (60) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Lot Owner, Parcel Owner and Tract Owner subject thereto. The due dates, for the payments of such assessments, including provisions for installment payments, shall be established by the Board of Directors. The Conservancy shall, upon demand, and for a reasonable charge, furnish a certificate signed by an agent of the Conservancy or by a member of the Board of Directors setting forth whether the assessments on a specified Lot, Parcel or Tract have been paid in full as provided in Section 15 below.

6.10 Fines. In addition to the right to establish all Assessments authorized hereinabove, the Conservancy shall have the power to adopt rules and regulations for the use and enjoyment of the Common Areas as provided in Article V. In connection with this right, the Conservancy may establish certain rules and regulations, the violations of which may result in a levy of a fine against the responsible Lot Owner, Parcel Owner, or Tract Owner by the Board of Directors of the Conservancy. Lot Owners, Parcel Owners and Tract Owners shall not be relieved from fines imposed hereunder because the action that gave rise to the fine was that of a Dweller on a Parcel owned by the Parcel Owner or an employee or invitee of a Tract Owner or a guest of a Lot Owner.

6.11 Delinquent Payment. Any assessment or fine, payment of which has not been received by the Conservancy within thirty (30) days from the date on which the said payment becomes due and payable, shall automatically become delinquent without further notice to the Lot Owner, Parcel Owner, or Tract Owner.

6.12 Liens and Personal Obligations. In order to secure payment of assessments, and/or fines, if such be levied against a plot owned by a Lot Owner, Parcel Owner or a Tract Owner, there shall arise a continuing lien and charge against each such Lot, Parcel or Tract on the date the payment of such assessment or fine shall be deemed delinquent as provided in Section 6.11 hereinabove. The lien shall remain in full force and effect until such time as all assessments and fines against said Lot, Parcel or Tract, together with accrued interest thereon at the rate of ten (10%) per cent per annum from the date of delinquency and any and all costs resulting therefrom, including reasonable attorney's fees, shall have been paid in full.

The lien provided for herein securing delinquent assessments and fines together with accrued interest thereon and any and all costs incidental thereto shall be subordinate to liens of records (mortgages or deeds of trust) on any Lot, Parcel or Tract which are recorded

S4 4074

prior to the time when the said lien becomes effective; but liens securing unpaid assessments and fines from and after their dates of delinquency shall take precedence over any subsequent conveyance, encumbrance, judgment, attachment, or claim of title of any Trustee in Bankruptcy. The sale or transfer of any Lot, Parcel or Tract pursuant to a mortgage foreclosure shall extinguish the lien of such assessment or fine as to payments which become due subsequent to the recordation of the mortgage which has been foreclosed, but the Conservancy shall have a lien upon the proceeds from a foreclosure junior only to the lien of the foreclosed mortgage. Sales under power of sale contained in deeds of trust shall be synonymous with foreclosure sales as provided for herein.

6.13 Enforcement of Lien. A lien for delinquent assessments or fines may be enforced by suit brought in the name of the Conservancy acting on behalf of itself and its members in like manner as the enforcement of liens as provided by the laws and statutes of the State of Tennessee. Without prejudice to its right to bring such a suit for enforcement, the Conservancy, at its option, may enforce collection of delinquent assessments or fines by any other competent proceeding and, in any event, the Conservancy shall be entitled to recover in such action, suit or proceeding, the assessments or fines which are delinquent at the time of judgment or decree, together with interest thereon at the rate of ten (10%) per cent per annum from the date of delinquency together with all costs incidental to the collection, including, but not limited to, reasonable attorney's fees and court costs.

6.14 A Lien Running with the Land. Any lien which shall attach to a Lot, Parcel or Tract as a result of a delinquent assessment or fine shall run with the land, and the lien shall remain on the said Lot, Parcel or Tract notwithstanding a sale, transfer or other conveyance of such property, whether outright or as security, except a foreclosure sale pursuant to a prior recorded mortgage as provided.

6.15 Written Statement Upon Request. Upon the written request of any Lot Owner, Parcel Owner, Tract Owner or mortgagee, or prospective owner or mortgagee, or their agents, the Conservancy or its duly appointed agent shall furnish to the person making the request a statement in writing of any assessments or fines which are unpaid and owing, as of a given date, by any Lot Owner, Parcel Owner or Tract Owner. The said written statement by the Conservancy or its duly appointed agent shall be conclusive evidence, binding upon the Conservancy, of any payment of any assessment or fine therein stated to have been paid. A reasonable charge may be established by the Board of Directors of the Conservancy for the

S4 4074

furnishing of such information.

Upon the written request of any mortgagee, the Conservancy or its duly appointed agent shall furnish to such mortgagee a statement in writing of any assessments or fines charged against a Lot, Parcel or Tract which the said mortgagee holds as security for an obligation; and upon the written request of such mortgagee, the Conservancy or its duly appointed agent shall agree to notify the said mortgagee when any assessment or fine charged against any Lot, Parcel or Tract becomes delinquent. A reasonable charge may be established by the Board of Directors of the Association for the furnishing of such information.

ARTICLE VII

LAND USE AND ARCHITECTURE

CONTROL COMMITTEE

7.1 Purpose. The Land Use and Architecture Control Committee shall exercise its best judgement to see that both original and all follow-up improvements, construction, landscaping and alterations on lands within the Property and which are subject hereto conform to and harmonize with existing and expected surroundings and structures. Each Lot, Parcel, Tract, and the Right of Common Area(s) Access and Enjoyment shall be governed by a set of restrictions, covenants, and conditions as described in Articles VIII, IX and X herein, the purpose of which is to carry out the Plan for development and maintenance of the Property.

7.2 Organization. During the Organizational Meeting, the Board of Directors shall establish the Land Use and Architecture Control Committee. Until such time, the Developer shall exercise total control of the land use and architecture of any and all improvements to and on any and all portions of the Property, subject to applicable laws and statutes in the State of Tennessee. During the Organizational Meeting, the Developer shall appoint two (2) persons to the Land Use and Architecture Control Committee. One (1) of these Developer-appointed persons shall serve a three (3) year term. The other of these Developer-appointed persons shall serve a two (2) year term. During the Organizational Meeting, the Board of Directors shall appoint two (2) persons to the Land Use and Architecture Control Committee. One (1) of these Board-appointed persons shall serve a one (1) year term. The other of the Board-appointed persons shall serve a one (1) year term as an alternate Committee member to serve in the absence of any of the other Committee members. Thereafter, subsequent appointments to fill vacant Committee seats due to term expirations shall be made during one of its meetings by the Developer and by the Board of Directors of the Bennington Conservancy, and all subsequent

S4 4074

appointments shall be for two (2) year terms. Vacant Board-appointed seat(s) shall be refilled by Board appointment(s) within 60 days of such a vacancy and which replacement shall be for the remainder of the term vacated. Vacant Developer-appointed seat(s) shall be refilled by Developer appointment(s). During the fourth Annual Meeting after the Organizational Meeting, the Land Use and Architecture Control Committee shall be increased by one (1) additional member to serve a two (2) year term for a total membership of five (5) persons (four regulars, one alternate). The Developer shall appoint this additional member. During the fifth Annual Meeting after the Organizational Meeting, the Land Use and Architecture Control Committee shall be increased again by one (1) additional member to serve a two (2) year term for a total membership of six (6) persons (five regulars, one alternate). The Developer shall appoint this additional member and thereafter shall appoint four (4) of the six (6) Committee Members until the Developer relinquishes this right to the Board of Directors of the Conservancy by an appropriate instrument. The Committee should include, if possible, two regular members who are recognized professional land use planners, architects, landscape architects, or civil engineers. If such professional membership cannot be maintained through the above-described appointment process then the Board of Directors shall retain at least one (1) such professional subject to the expressed written approval of the Developer, to act as a professional advisor and consultant to the Committee. After the fourth Annual Meeting after the Organizational Meeting, at least three (3) Committee members must be Members of the Conservancy or residents in the Villages of Bennington. After the fifth Annual Meeting after the Organizational Meeting, at least four (4) Committee members must be Members of the Conservancy or residents in the Villages of Bennington. After the Developer relinquishes to the Board of Directors the right to appoint Committee members, all Committee members must be Members of the Conservancy or residents in the Villages of Bennington.

7.3 Procedures. The Land Use and Architecture Control Committee shall approve or disapprove all plans and requests within forty-five (45) days after submission unless a written extension is provided by the applicant. In the event the Committee fails to take any action within forty-five (45) days after requests have been officially submitted, approval will be deemed to have been provided. In the event the Committee disapproves or denies an officially submitted request, then the applicant may appeal the disapproval or denial to the Board of Directors for review and possible approval. Such appeals must be made in writing to the Board of Directors within

S4 4074

fifteen (15) days from the date of the original denial, or such right of appeal shall be forfeited. Such appeals shall be reviewed at the next scheduled meeting of the Board of Directors or within 60 days which ever comes first.

7.4 Majority Vote. A majority vote of the Land Use and Architecture Control Committee is required for denial of any proposed improvements.

7.5 Written Records. The Land Use and Architecture Control Committee shall maintain written records of all applications submitted, and of all actions it may have taken including written minutes of all its meetings. The Board of Directors shall provide a sufficient budget to execute this (and other) sections of this Article.

7.6 Liability Waiver. The Land Use and Architecture Control Committee, the Board of Directors, the Conservancy or any of its Members or assigns, or the Developer or any of its assigns, shall not be liable for any damage to any person or Owner submitting requests for approval of any proposal by reason of any action, failure to act, approval, denial, or failure to approve or deny with regards to such requests.

7.7 Review By Committee. In order to insure conformance and harmony between existing, expected and proposed improvements to the Property, the Land Use and Architecture Control Committee shall maintain the spirit and intent of the Final Phase Plans. The Committee can consider as valid reasons for plan variances the deviation in market conditions. The nature of the Planned Unit Development on the Plan for the Property should allow the Developer flexibility while preserving the spirit and intent of the preliminary Plan. This does not imply that such flexibility has no limits. Rather the binding nature of Final Phase Plans insures that once such Plans have been officially recorded, these Plans shall provide the basis for review of individual Lot, Parcel and Tract development proposals by the Developer and other land owners within the Property.

Therefore, in recognition of the above, no structure accessory building, tennis court, swimming pool, roof or mast antenna, flagpole, fence, wall, exterior lighting, or other improvements shall be constructed or maintained upon any Lot, Parcel, or Tract, and no exterior alterations shall be made; no repainting to the exterior of a structure other than a single family detached house shall be made, and no permanent plant materials added to or subtracted from a plot other than for a single family detached house unless complete plans, specifications, showing the exterior design, height, buildings material and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan

S4 4074

of landscaping, fencing, walls and windbreaks, and the grading plan shall have been submitted to and approved in writing by the Land Use and Architecture Control Committee, and a copy of such plans, specifications and site plans as finally approved, deposited with the Land Use and Architecture Control Committee. All such improvements shall be completed within twelve (12) months from the beginning of construction, after which time such approvals shall become null and void.

Further in recognition of the above described Committee Review, the following Articles VIII, IX, and X are presented as Restrictions and Covenants binding on the use of and improvements to and on the Property which is subject hereto. Specific Design Performance Standards for residential and non-residential uses on the Lots, Parcels and Tracts may be adopted by the Conservancy. The Land Use and Architecture Control Committee shall use the Specific Design Performance Standards so adopted as its design guidelines as would a Planning and/or Zoning Board for a county or a city.

ARTICLE VIII

GENERAL RESTRICTIONS AND COVENANTS

8.1 Applicability. The following Restrictions and Covenants apply to any portions of the Property which are subject hereto. Such Restrictions and Covenants address the types of activity, structures, and alterations to the landscape that are within the spirit and intent of the Plan for the Villages of Bennington. Decisions regarding specific construction and landscaping material, methods, and timing are the responsibility of the Land Use and Architecture Control Committee. Guidelines for specific material, methods and timing as opposed to the type Restrictions and Covenants presented immediately below shall be adopted by the Conservancy as provided in Article VII.

8.2 Uses.

- .2.1 Further Subdivision: No Lot, Parcel, or Tract may be further subdivided, or a portion conveyed away after it has been designated on an officially recorded Final Phase Plan unless such subdivision is approved by the City of Memphis, the County of Shelby and by the Land Use and Architecture Control Committee of the Villages of Bennington.
- .2.2 Temporary Use by the Developer: Notwithstanding anything to the contrary contained herein, the Developer reserves the right to use one or more Lots, Parcels, or Tracts, or other portions of the Property owned by the Developer or others for a temporary office location and for storage and use

S4 4074

of construction equipment and material relative to development of the Property.

- .2.3 Final Phase Plans Restrictions: The Property will be developed in Phases under the Plan for a Planned Unit Development as indicated on page 1. The Developer may impose any restrictions upon any part of the Property within a particular Phase, and such restrictions shall become effective without further action upon official recording of the Final Phase Plan which contains said restrictions. Such a process of Planned Unit Development insures maintenance of the spirit and intent of the Plan for the Property, since considering the deviation in market conditions, the PUD process allows the Developer flexibility to meet a changing market while preserving that spirit and intent.
- .2.4 Land Use: All Lots shall be used for single family purposes only; all Parcels shall be used for multi-family residential purposes only; and all Tracts shall be used for only such non-residential uses as are permissible under applicable law.
- .2.5 Nuisances, Hazards, and Unsightly Objects: No noxious or offensive activity shall be conducted upon any Lot, Parcel, Tract, Common Area or Community Open Space (including streets), nor shall anything be done or conditions permitted to exist which may be or become an annoyance, nuisance, or hazard to the health, safety or welfare of neighbors or the community. All Lots, Parcels, and Tracts shall be kept clean and free of trash, rubbish, garbage, debris, litter, or other unsightly objects or material at all times. Wastes shall be managed in a clean and sanitary manner, and all waste containers or equipment for storage or disposal of wastes shall be kept tightly closed, inside garages, behind fencing or walls, or otherwise hidden from adjacent properties and streets.
- .2.6 Animals: No Lot, Parcel, or Tract shall be used for keeping, breeding, or raising any animals for commercial purposes, or for keeping horses, mules, cattle, poultry, pigeons or other animals, except that residents may keep the usual and customary household pets (not to exceed three (3) mammals per dwelling). However, nothing contained herein shall prohibit Parcel Owners from excluding all types of animals from the multi-

S4 4074

family improvements on their Parcels.

- .2.7 Boating on Common Area Lakes: No motor boats shall be allowed on the lakes, ponds, or other water bodies in the Common Area(s) except those being used specifically for maintenance and as approved by the Land Use and Architecture Control Committee.

8.3 Structures and Landscaping.

- .3.1 Used Structures: No used structure shall be moved to the Property for use on any Lot, Parcel, or Tract unless such structure will be compatible with neighboring structures, will be used in the manner for which it was originally intended, is sound and of recognizable architectural and historic significance.
- .3.2 Building Lines: No main or accessory building (permanent or temporary) shall be erected except within building lines and in accordance with applicable ordinances or as specified on appropriate Final Phase Plans, which ever is more constraining.
- .3.3 Party Walls: Each wall built as part of two or more contiguous buildings, structures or dwelling units upon the Property shall be a Party Wall, and consistent with the provisions of this Section, the general rules of law regarding Party Walls and of liability for property damage due to negligent or willful acts or omissions shall apply. Cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who use the wall in proportion to such use. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if other Owners then use the wall, they shall contribute to the cost of restoration in proportion to such use without risk to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provisions of this Section, an Owner who by negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection from the elements. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In the event of any dispute arising concerning a Party Wall, or under provisions.

S4 4074

of this section, said dispute shall be referred to the Land Use and Architecture Control Committee for arbitration and majority vote decision.

- .3.4 Height and Bulk: No main or accessory building shall be erected except within height and bulk restrictions and in accordance with applicable ordinances or as specified on appropriate Final Phase Plans, whichever is more constraining.
- .3.5 Construction Materials: Exterior walls of each building are to be constructed of durable, permanent materials, tastefully handled and consisting of carefully selected brick, treated concrete, or other architectural surfaces (such as glass, wood or steel).
- .3.6 Easements: Easements for installation, operation, and maintenance of fences, utilities, and drainage facilities shall be reserved and shown on Final Phase Plans. Right of entry for such purposes is expressly reserved.
- .3.7 Preservation of Trees and Shrubs: After Subdivision of the Property, no trees or shrubs shall be removed from a Lot, Parcel, or Tract except for foundation sites, driveways and parking lots, and except as required by utility companies specifically for furnishing and maintenance of utility services, unless approval is granted by the Land Use and Architecture Control Committee.
- .3.8 Landscaping and Paving: The Common Area(s) shall be landscaped by berms, fences, plantings and the like; and no Owner of any of the Property shall at any time disturb such landscaping without the approval of the Land Use and Architecture Control Committee. All paving shall be of bituminous concrete, concrete, paving brick or stone, or an approved equal material. At no time shall the amount of impervious ground cover (building and/or pavement) within the Common Area(s) exceed five percent (5%).
- .3.9 Exterior Maintenance: The grounds and structures of each Lot, Parcel, or Tract shall be maintained in a neat and attractive manner. Upon the Owner's failure to do so, the Board of Directors after giving the Owner thirty (30) days written notice, may have the grass, weeds, and vegetation cut when and as often is necessary in its judgement, have dead trees, shrubs and plants removed, and make repairs in a

S4 4074

reasonable and workmanlike manner. The cost of such maintenance described immediately above shall be assessed against the property upon which such maintenance is done in accordance with Article VI, Section 7 (b) of this Declaration. For the purpose solely of performing the maintenance described above, the Conservancy or its assigns shall have the right, after reasonable notice to the Owner, to enter upon any property at reasonable hours on any business day.

ARTICLE IX

RESIDENTIAL RESTRICTIONS AND COVENANTS

9.1 Applicability. The following Restrictions and Covenants apply to any and all Lots and Parcels of the Property which are subject hereto. Such Restrictions and Covenants address the types of activity, structure, and alterations to the landscape that are within the spirit and intent of the Plan for the Villages of Bennington. Decisions regarding specific construction and landscaping material, methods, and timing are the responsibility of the Land Use and Architecture Control Committee. Guidelines for specific material, methods and timing, as opposed to the type Restrictions and Covenants presented immediately below, will be adopted by the Conservancy as provided in Article VII.

9.2 Use. Only residential and directly related uses shall be permitted on Lots and Parcels.

.2.1 Vehicles, Storage, Parking, and Garages: No commercial type vehicles shall be stored or parked on any Lot or Parcel, nor parked on any residential street except while engaged in delivery, service, or transport from a residence. No bicycle, motorcycle, automobile, or truck, and no house trailer, mobile home, motorhome, camper, boat, boat trailer, camping trailer, house trailer, horse or produce trailer, or similar wheeled vehicle or trailer, and no airplane or recreational vehicle shall be stored or parked on any street in the Property (the right to use public streets for such purposes being specifically waived), or on any driveway, Lot, Parcel, or Tract, except in an enclosed garage or under a carport in which such vehicles and trailers are hidden from adjacent property and streets. All passenger automobiles regularly in use shall be parked in an enclosed garage or under a carport in which said automobiles are hidden from adjacent property and streets, or on the driveway leading to said garage or carport, and may not be parked in any yards or

S4 4074

other areas not specifically designated for parking. No flat bed or dump truck and no tractor-trailer can be parked on any Lot and no trailer without a tractor can be parked on any Lot or in the street in front of a house. Garages shall be used only for parking and storage of automobiles, or other types of vehicles and trailers described above, or storage of other personal items. All garages shall be kept closed except when in immediate use for entrance or exit. No motor or other vehicle including a boat, motor boat trailer, lawn mower, tractor or other similar vehicle may be stored on any Lot for the purpose of repair of same, and no A-frame or motor mount may be placed on any Lot even temporarily. No disabled auto, truck, tractor or any other type vehicle shall be stored on any Lot and no repairs to any vehicles or property shall take place on any Lot where such repairs constitute or are done for a commercial purpose.

.2.2 Outside Clotheslines: Outside clotheslines shall be hidden from adjacent properties and streets.

.2.3 Vegetable Gardening: Vegetable gardening shall be hidden from adjacent properties and streets.

9.3 Structures and Landscaping.

.3.1 Temporary and Accessory Structure: No structure of a temporary character, and no trailer, mobile home, tent, garage, nor basement shall be used at any time, on any Lot, Parcel, or Tract as a residence. Except for a garage, no separate structures from the main residence shall be permitted on any Lot or Parcel other than one detached building with dimensions of not more than six feet, by six feet, by six feet (6' x 6' x 6').

.3.2 Rooftop Projections, Antenna Masts, and Flagpoles: Although each Lot, Parcel, and Tract will have particular topographic, vegetation and visual conditions which will require review, the skyline of the natural tree cover shall be protected to the maximum practical extent from intrusions by buildings, antenna masts, flagpoles and the like. On any Lot or Parcel no structure including TV, ham or CB radio antenna or mast, or flagpole, or implement of any kind shall extend more than five (5) feet above the main roof line of the house.

.3.3 Fences and Walls: On any Lot, no fence or wall shall

S4 4074

be erected which exceeds five (5) feet in height. On any Parcel, no fence or wall shall be erected which exceeds six (6) feet in height. No fence or wall shall be erected on a Lot between the front of any residence and a street. No fence or wall may be erected between detached residences, nor between the side of a residence and the street on corner Lots or Parcels, without prior written consent or waiver by the Owners of adjacent properties and by the Owners of all properties any portion of which is directly across the street(s) or sharing an intersection. All fences or walls must be constructed of brick, stone, wood or a combination thereof but not of chain link and shall be subject to review and approval by the Land Use and Architecture Control Committee.

- .3.4 **Signing:** No billboards, signboards, or advertising displays of any kind shall be installed or permitted to remain on any Lot or Parcel except that one sign containing not more than eight (8) square feet of surface area (front plus back if said sign is free-standing) may be displayed relative to the sale of a Lot or Parcel or construction thereon or to indicate the name of a multifamily dwelling on a Parcel. All signs used in the Property, including house numbers and those described immediately above, shall be subject to review and approval by the Land Use and Architecture Control Committee.

ARTICLE X

NON-RESIDENTIAL RESTRICTIONS AND COVENANTS

10.1 Applicability. The following Restrictions and Covenants apply to any and all portions of the Tracts of the Property. Such Restrictions and Covenants address the types of activity, structures and alterations to the landscape that are within the spirit and intent of the Plan for the Villages of Bennington. Decisions regarding specific construction and landscaping material, methods, and timing are the responsibility of the Land Use and Architecture Control Committee. Guidelines for specific material, methods, and timing, as opposed to the type Restrictions and Covenants presented immediately below shall be adopted by the Conservancy as provided in Article VII.

10.2 Use. Only commercial, office, institutional, industrial, and their directly related uses shall be permitted on the Tracts.

10.3 Structures and Landscaping.

- .3.1 **Pedestrian Shelter and Barrier Free Access:** Pedestrian

S4 4074

and particularly handicapped persons' access to any public and semi-public area depends on the relationship between physical elements within and outside the area. There must be continuous access through a given site, from the various types of transportation serving the site (streets, sidewalks, etc.), to the entries of buildings on the site. Consequently, all parts of a route between a transportation facility and a building entry should be made as easily accessible as possible. The following design considerations shall be incorporated with all improvements on Tracts in the Property. (a) Care should be taken to separate different types of transportation where partical for efficiency and safety. Vehicular traffic should be separated from bicycle traffic, and both should be separated from pedestrians. (b) Access to transportation facilities, through the site, and to buildings should be smooth and free of barriers which may prove impossible for physically restricted people to negotiate. Paving surfaces should be hard and relatively smooth, curbs should have ramped cuts, walks should be wide enough for two-way traffic and entrance walks to buildings should slope gently to the door platform. If stairs are normally required then at least one major entrance should be served by a ramp as well. (c) Doors into public and semi-public buildings should be activated by automatic opening devices, or when such devices are prohibitively costly, horizontal levers or through bars should be installed.

- .3.2 Night Lighting: Well designed soft lighting of buildings and grounds will be permitted provided that it is complimentary and provided that the light source is hidden from adjacent property and streets. Night Lighting should not draw inordinate attention to buildings or grounds. Parking lot, service area, and street lighting shall be provided by free standing fixtures with cut-off screening to assure that the light source is hidden from adjacent property and streets. Material and color as well as design of the fixtures shall be subject to review and approval in terms of compatibility with architecture and natural site characteristics by the Land Use and Architecture Control Committee. Public walkways shall be lighted at night, and such lighting fixtures may include cut-off or exposed

S4 4074

sources. But the height and intensity of such walkway lighting shall be subdued.

10.4 Commercial Buildings. Related facilities shall be integrated complexes located in areas so designated on Final Phase Plans. Access drives and pedestrian links shall conform with Final Phase Plans as well. All delivery, service, and waste storage areas shall be completely screened by walls, fencing, earth mounds and/or plantings. Architecture and landscaping shall be reviewed and approved by the Land Use and Architecture Control Committee. Pedestrian walkways shall be covered and protected from extremes in inclement weather and season. Signage in commercial areas shall be tightly controlled by the Land Use and Architecture Control Committee and shall be limited to fascia boards of a maximum three (3) feet in height. Parking Lots shall be screened from view from adjacent properties and planted with shade trees at a minimum interval of one (1) tree for every eight (8) parking spaces. On site surface drainage shall be required and at no time shall the combined impervious area of building and paving exceed fifty-five percent (55%).

10.5 Office and Institutional Buildings. Related facilities shall be integrated complexes located in areas so designated on Final Phase Plans. Buildings, parking lots, and access drives shall conform with Final Phase Plans as well. Shared entryways and contiguous parking facilities shall be vigorously encouraged. No exterior storage of materials (including waste) shall be permitted. Architecture and landscaping shall be reviewed and approved by the Land Use and Architecture Control Committee. Signage in office and institutional areas shall be tightly controlled by the Land Use and Architecture Control Committee. Fences and walls shall be architectural extensions of buildings and must be constructed of brick, stone, wood or a combination thereof and chainlink type fences are specifically prohibited. Parking lots shall be screened from view from adjacent properties and planted with shade trees at a minimum interval of one (1) tree for every eight (8) parking spaces. On site surface drainage is required, and at no time shall the combined impervious area of building and paving exceed sixty percent (60%).

10.6 Industrial Buildings. Related facilities shall be integrated complexes where all buildings are compatible and located in areas so designated on Final Phase Plans. Uses shall be limited to those set forth in the PUD approval which shall be filed of record with the approved General Plan. There shall be a maximum of two (2) curb cuts per plot with a minimum spacing of two hundred (200) feet. All parking shall be screened from adjacent properties by approved landscaping, earth mounds, and/or fences and walls. Parking requirements shall conform to appropriate city and county ordinance.

S4 4074

Separate parking for visitors shall be installed. Loading and service bays shall be screened in the same manner as parking areas. No materials (including waste) shall be stored outside. Site plans and architecture shall be reviewed and approved by the Land Use and Architecture Committee and shall include, but not be limited to: grading, plantings, lighting, signs, architectural facade, building and parking lot location and any special conditions set forth in the PUD approval. There shall be a minimum fifty (50) foot deep front yard landscaped as a continuous green belt with adjoining parcels. No structure or paving shall be closer than one hundred (100) feet to the Property boundary or residential use. No side yard shall be less than twenty-five (25) feet. No rear yard shall be less than fifty (50) feet. No building shall be closer than ten (10) feet to a parking lot unless a common parking lot is situated between contiguous plot owners. Signs shall be strictly controlled by the Land Use and Architecture Control Committee and shall consider size, location, conformity of material, design and color. Moving, flashing and/or animated signs are specifically prohibited. One sign shall be permitted per street frontage (excluding directional) provided it is in accordance with the PUD approved conditions. All utilities shall be placed underground. Fencing and walls shall be architectural extensions of buildings. Chainlink type fence is specifically prohibited. Night lighting shall conform with night lighting of adjoining properties. On-site control of surface water drainage or financial participation in common storm water retention ponds shall be required. At no time shall building and paving impervious ground cover exceed thirty-three percent (33%).

ARTICLE XI

GENERAL PROVISIONS

11.1 Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is officially recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Every purchaser, or subsequent grantee of any property now or hereafter made subject to this Declaration by acceptance of a deed or other conveyance therefor agrees that the covenants and restrictions set forth in this Declaration may be extended as provided in this Article.

11.2 Amendments. This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by Whitehead Properties, Inc. and by not less than seventy (70%) percent of the other Lot Owners, Parcel Owners or Tract Owners and thereafter by an instrument signed by not less than sixty (60%) percent of the Lot Owners, Parcel Owners and Tract Owners.

S4 4074

Any amendment must be officially recorded.

11.3 Enforcement. The Conservancy, or any Lot Owner, Parcel Owner or Tract 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 Conservancy or by any Lot Owner, Parcel Owner or Tract Owner to enforce any covenant or restrictions contained herein shall in no event be deemed a waiver of the right to do so thereafter.

11.4 Notice. Any notice required to be sent to any owner of a portion of the Property, or to any Dweller, under the provisions hereof shall be either personally delivered or mailed, postage prepaid, to the last known address of the person or entity who appears as the owner on the records of the Conservancy at the time of mailing or to any Dweller's last known address as ascertained by reasonable inquiry. If mailed, the notice shall be deemed given one day after the date of mailing.

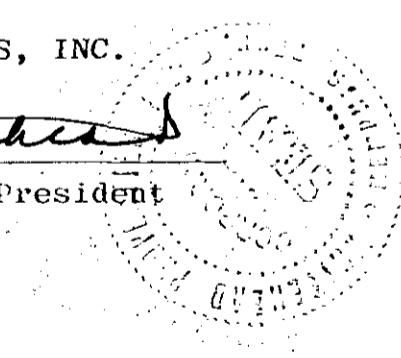
11.5 Invalidation by Court Order. Invalidation of any of the provisions herein by judgment or court order shall in no way affect any of the other provisions herein which shall remain in full force and effect.

11.6 Singular, Plural and Gender. As used herein the plural shall include the singular, the singular the plural, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, Whitehead Properties, Inc., being the declarant herein, has hereunto caused this instrument to be duly executed the day and year first above written.

WHITEHEAD PROPERTIES, INC.

By: Cary Whitehead
Cary Whitehead, President



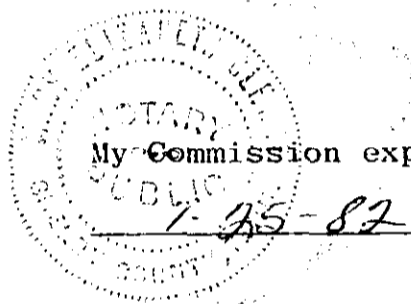
S4 4074

STATE OF TENNESSEE)
COUNTY OF SHELBY)

Before me, a Notary Public in and for said State and County duly commissioned and qualified, personally appeared Cary Whitehead, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the President of Whitehead Properties, Inc., a corporation, and that he as such President being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

WITNESS my hand and seal at office this the 29th day of April, 1981.

Mary Elizabeth Cleary
Notary Public

 My Commission expires: 7-25-82

VILLAGES OF BENNINGTON

Exhibit "A"

S4 4074

Beginning at a point in the northeast corner of Ross Road and Holmes Road; thence north along the east line of Ross Road, a distance of 408.01 feet to a point; thence west 34 feet to a point in the centerline of Ross Road; thence north along the centerline of Ross Road 2322.38 feet to a point; thence east 1090.00 feet to a point; thence north 1200 feet to a point; thence east 150 feet to a point; thence north 1307 feet more or less to a point in the centerline of Shelby Drive; thence east along the centerline of Shelby Drive 1050.00 feet more or less to a point on the western bank of a creek; thence southeastwardly along said creek bank 1259.14 feet to a point in the west line of Germantown Road Extended; thence east across Germantown Road Extended a distance of 106.00 feet to a point in the east line of Germantown Road Extended; thence northwardly along the east line of Germantown Road Extended a distance of 430.00 feet more or less to the centerline of Bennington Way; thence east along the centerline of Bennington Way 170.00 feet to a point; thence north 224.00 feet to a point; thence east 18.93 feet to a point; thence north 90 feet to a point; thence east 100 feet to a point; thence north 357 feet to a point in the centerline of Shelby Drive; thence east along the centerline of Shelby Drive 2272.70 feet to a point; thence south 209.10 feet to a point; thence southwestwardly 468.21 feet to a point; thence northwestwardly 34 feet to a point; thence southwestwardly 382 feet to a point; thence northwestwardly 55 feet more or less to a point; thence southwestwardly 1850 more or less feet to a point in the east line of Germantown Road Extended; thence southwardly along said east line of Germantown Road Extended, a distance of 300 more or less feet to a point; thence southeastwardly along the centerline of a creek a distance of 550 feet more or less to a point in the east line of Germantown Road; thence northwardly 93.43 feet to a point; thence eastwardly 1976.14 feet to a point; thence southwardly 287.6 feet to a point; thence eastwardly 1095.25 feet to a point; thence southwardly 859.70 feet to a point; thence eastwardly 1071.60 feet to a point; thence southwardly 1071.57 feet to a point; thence westwardly 200 feet to a point; thence southwardly 560.49 feet to a point in the north line of Holmes Road; thence westwardly along the north line of Holmes Road a distance of 1869.23 feet to a point; thence northwardly 933.33 feet to a point; thence westwardly 202 feet to a point; thence northwardly 557.3 feet to a point; thence westwardly 1781 feet to a point in the centerline of Old Germantown Road; thence southwardly along the centerline of Old Germantown Road 2606.5 feet more or less to a point in the north ROW line of Holmes Road; thence northwestwardly along the north ROW line of Holmes Road a distance of 514.25 feet to the east line of Germantown Road Extended; thence westwardly across Germantown Road Extended a distance of 106.6 feet to a point in the west line of Germantown Road Extended; thence southwestwardly along the northwesterly ROW line of Holmes Road a distance of 767.27 feet to a point in the north line of Holmes Road; thence westwardly along the north line of Holmes Road a distance of 140 feet more or less to a point; thence southwardly a distance of 1488.39 feet to a point; thence westwardly 524.67 feet to a point; thence southwardly 1321.02 feet to a point; thence westwardly 245.41 feet to a point; thence southwardly 1062.72 feet to a point; thence westwardly 418.41 feet to a point; thence southwardly 472.31 feet to the centerline of Stateline Road; thence westwardly along the centerline of Stateline Road, a distance of 1578.73 feet to a point; thence northwardly 1550.14 feet to a point; thence westwardly 78.98 feet to a point; thence northwardly 34.76 feet to a point; thence eastwardly 339.80 feet to a point; thence northwardly 1284.75 feet to a point; thence eastwardly 81.45 feet to a point; thence northwardly 1313.71 feet to a point in the south line of Holmes Road; thence eastwardly along the south line of Holmes Road, 710 more or less feet to a point; thence northwardly 190 feet to the point of beginning.

LW.

S2 5878

8

S4 4074

State of Tennessee



Department of State

CERTIFICATE

The undersigned, as Secretary of State of the State of Tennessee, hereby certifies that the attached document was received for filing on behalf of VILLAGES OF BENNINGTON PROPERTY OWNERS CONSERVANCY, (Name of Corporation) was duly executed in accordance with the Tennessee General Corporation Act, was found to conform to law and was filed by the undersigned, as Secretary of State, on the date noted on the document.

THEREFORE, the undersigned, as Secretary of State, and by virtue of the authority vested in him by law, hereby issues this certificate and attaches hereto the document which was duly filed on January Twenty-ninth, 1981.

Henry Crowell
Secretary of State



EXHIBIT B

FILED
SECRETARY OF STATE
1981 JAN 29 PM 1:30

CHARTER

S2 5878

0 0 1 9 4 0 0 3 8 7

VILLAGES OF BENNINGTON
PROPERTY OWNERS CONSERVANCY

S4 4074

The undersigned natural persons, having capacity to contract, and acting as the incorporators of a corporation under the Tennessee General Corporation Act, adopt the following Charter for such corporation:

1. The name of the corporation is: Villages of Bennington Property Owners Conservancy.
2. The duration of the corporation is perpetual.
3. The address of the principal office of the corporation in the State of Tennessee shall be P. O. Box 30078, 6900 E. Holmes Road, Memphis, Shelby County, Tennessee 38130.
4. The corporation is not for profit.
5. The purposes for which the corporation is organized are:

This Conservancy does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance and preservation of privately owned lots, parcels and tracts and the Common Area (as the "Common Area" shall be defined in the By-Laws of the Conservancy) within that certain tract of property (the "Property") in Shelby County, Tennessee described as:

DESCRIPTION

Beginning at a point in the northeast corner of Ross Road and Holmes Road; thence north along the east line of Ross Road, a distance of 408.01 feet to a point; thence west 34 feet to a point in the centerline of Ross Road; thence north along the centerline of Ross Road 2322.38 feet to a point; thence east 1090.00 feet to a point; thence north 1200 feet to a point; thence east 150 feet to a point; thence north 1307 feet more or less to a point in the centerline of Shelby Drive; thence east along the centerline of Shelby Drive 1050.00 feet

FILED
SECRETARY OF STATE

1981 JAN 29 PM 1:30

more or less to a point on the western bank of a creek; thence
southeastwardly along said creek bank 0 0 1 2 5 9 . 1 4 4 feet to a point 0 0 3 1 8 8
S2 5878
S4 4074

in the west line of Germantown Road Extended; thence east
across Germantown Road Extended a distance of 106.00 feet to a
point in the east line of Germantown Road Extended; thence
northwardly along the east line of Germantown Road Extended a
distance of 430.00 feet more or less to the centerline of
Bennington Way; thence east along the centerline of Bennington
Way 170.00 feet to a point; thence north 224.00 feet to a
point; thence east 18.93 feet to a point; thence north 90 feet
to a point; thence east 100 feet to a point; thence north 357
feet to a point in the centerline of Shelby Drive; thence east
along the centerline of Shelby Drive 2272.70 feet to a point;
thence south 209.10 feet to a point; thence southwestwardly
468.21 feet to a point; thence northwestwardly 34 feet to a
point; thence southwestwardly 382 feet to a point; thence
northwestwardly 55 feet more or less to a point; thence south-
westwardly 1850 more or less feet to a point in the east line
of Germantown Road Extended; thence southwardly along said east
line of Germantown Road Extended, a distance of 300 more or
less feet to a point; thence southeastwardly along the center-
line of a creek a distance of 550 feet more or less to a point
in the east line of Germantown Road; thence northwardly 93.43
feet to a point; thence eastwardly 1976.14 feet to a point;
thence southwardly 287.6 feet to a point; thence eastwardly
1095.25 feet to a point; thence southwardly 859.70 feet to a
point; thence eastwardly 1071.60 feet to a point; thence south-
wardly 1071.57 feet to a point; thence westwardly 200 feet to a
point; thence southwardly 560.49 feet to a point in the north
line of Holmes Road; thence westwardly along the north line of
Holmes Road a distance of 1869.23 feet to a point; thence
northwardly 933.33 feet to a point; thence westwardly 202 feet
to a point; thence northwardly 557.3 feet to a point; thence
westwardly 1781 feet to a point in the centerline of Old
Germantown Road; thence southwardly along the centerline of

FILED
 SECRETARY OF STATE
 1981 JAN 29 PM 1:30

00194 0030 in the
 S2 5878

the north ROW line of Holmes Road a distance of 514.25 feet **S4 4074**
 the east line of Germantown Road Extended; thence westwardly
 across Germantown Road Extended a distance of 106.0 feet to a
 point in the west line of Germantown Road Extended; thence
 southwestwardly along the northwesterly ROW line of Holmes Road
 a distance of 767.27 feet to a point in the north line of
 Holmes Road; thence westwardly along the north line of Holmes
 Road a distance of 140 feet more or less to a point; thence
 southwardly a distance of 1488.39 feet to a point; thence west-
 wardly 524.67 feet to a point; thence southwardly 1321.02 feet
 to a point; thence westwardly 245.41 feet to a point; thence
 southwardly 1062.72 feet to a point; thence westwardly 418.41
 feet to a point; thence southwardly 472.31 feet to the center-
 line of Stateline Road; thence westwardly along the centerline
 of Stateline Road, a distance of 1578.73 feet to a point;
 thence northwardly 1550.14 feet to a point; thence westwardly
 78.98 feet to a point; thence northwardly 34.76 feet to a
 point; thence eastwardly 339.80 feet to a point; thence north-
 wardly 1284.75 feet to a point; thence eastwardly 81.45 feet to
 a point; thence northwardly 1313.71 feet to a point in the
 south line of Holmes Road; thence eastwardly along the south
 line of Holmes Road, 710 more or less feet to a point; thence
 northwardly 190 feet to the point of beginning and to promote
 the health, safety and welfare of the residents within the
 above-described property and any additions thereto as may here-
 after be brought within the jurisdiction of this Conservancy;
 and for this purpose to:

- (a) exercise all of the powers and privileges and to
 perform all of the duties and obligations of the
 Conservancy as set forth herein and as may be set
 forth in the By-laws of the Conservancy as shall be
 adopted by the members thereof, and as the same may

FILED
SECRETARY OF STATE
1981 JAN 29 PM 1:30

be amended from time to time as therein provided; (b) ^{00124 00390} 28 5878

fix, levy, collect and enforce payment by any lawful means of all charges or assessments pursuant to the terms of the By-laws; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Conservancy, including all licenses, taxes or governmental charges levied or imposed against the property of the Conservancy; (c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Conservancy; (d) dedicate, sell or transfer all or any part of real property owned by the Conservancy or the Common Area (as that term shall be defined in the By-laws of the Conservancy) to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members; (e) participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional residential property and Common Area (as that term shall be defined in the By-laws of the Conservancy), (f) transfer and convey all or any part of the Common Area (as that term shall be defined in the By-laws of the Conservancy) for the purpose of securing the repayment of any loans made to or for the benefit of the Conservancy; provided that such transfer or conveyance shall have the written approval of at least four (4) of the voting members of the Board of Directors; and (g) have and to exercise any and all powers, rights and privileges which a corporation organized under the General Corporation Act of the State of Tennessee by law may now or hereafter have or exercise.

S4 4074

FILED
SECRETARY OF STATE

1981 JAN 29 PM 1:30

00194 00391

S2 5878

S4 4074

This corporation is to have members. Every person or entity who is a record owner of an officially subdivided single family lot ("Lot"), every person or entity who is the owner of a parcel of the property upon which are constructed multifamily dwellings ("Parcel") and every person or entity who is the owner of a tract upon which improvements for the conduct of business may be situated ("Tract") within the Villages of Bennington Planned Unit Development (which shall be within the boundaries of the land described above) shall be a member of the Villages of Bennington Property Owners Conservancy. This provision is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

7. Other provisions:

(a) The Developer, Whitehead Properties, Inc., a Tennessee corporation, shall be entitled to three (3) votes with respect to all matters coming before the Conservancy for each subdivided Lot, Parcel or Tract of the Property that it owns and ten (10) votes for each acre of land within the Property that has not been officially subdivided of record in the Register's Office of Shelby County, Tennessee. If said Developer should (i) merge with another corporation, whether or not the Developer is the surviving corporation, or (ii) consolidate with another corporation, or (iii) sell or convey all of its interest in the Property to another or (iv) if all of the property of Developer within the Villages of Bennington Planned Unit Development should be sold under power of sale in any deed of trust or under any mortgage covering same, then the surviving corporation in the case of (i) above, the resulting corporation in the case of (ii) above, the transferee of Developer in the case of (iii) above and the purchaser at any sale as provided in (iv) above shall thereafter be vested with all of the rights of Developer, Whitehead Properties, Inc., as are contained herein, in the By-laws of the Association and in

FILED
SECRETARY OF STATE
1981 JAN 29 PM 1:30

the Declaration of Covenants, Conditions and Restrictions, as
affect the Property, and as all of same may be amended from **S2 5878**

time to time.

S4 4074

(b) Except as provided above with respect to the Developer, no more than one vote shall be cast with respect to any one Lot or any one Parcel or any one Tract of the Property regardless of how legal title to such Lot, Parcel or Tract may be vested.

(c) The affairs of this Association shall be managed by a Board of Directors composed of five (5) persons who shall be members of the Association or officers or employees of entities which are members of the Association; provided, however, that at all times during which the Developer owns five (5) or more Lots or one or more acres of un subdivided land, it shall be entitled to select one (1) designee who shall serve as an additional ex officio member of the Board of Directors with full entitlement to all rights and privileges commensurate herewith with the exception that such ex officio member shall not be entitled to vote.

(d) The Association may be dissolved upon the authorization of not less than two-thirds (2/3) of the entire membership of the Association.

(e) Membership shall be appurtenant to and may not be separated from ownership of any Lot, Parcel or Tract which is subject to assessment by the Villages of Bennington Property Owners Conservancy

(f) Certain terms as used herein, i.e. Lot, Parcel, Tract and Common Area, shall be specifically defined in the By-Laws of the Conservancy.

Dated: January 23, 1981.

C. Thomas Cates

James O. Miller

BY-LAWS

OF

S4 4074

VILLAGES OF BENNINGTON PROPERTY OWNERS CONSERVANCY

ARTICLE I

NAME AND LOCATION

The name of the corporation is the Villages of Bennington Property Owners Conservancy, hereinafter referred to as the "Conservancy". The principal office of the corporation shall be located at 6900 Holmes Road, Memphis, Shelby County, Tennessee, but meetings of members and directors may be held at such places within the State of Tennessee, County of Shelby, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

1. "Conservancy" shall mean and refer to the Villages of Bennington Property Owners Conservancy, its successors and assigns.
2. "Property" shall mean and refer to those portions of that certain real property described in the Declaration of Covenants, Conditions and Restrictions (the "Declaration") relating to the Villages of Bennington that, in accordance with the terms of the Declaration, are subjected to the terms thereof, and such other real property as may hereafter be brought within the jurisdiction of the Conservancy.

EXHIBIT C

3. "Final Phase Plan" shall mean that document or documents officially filed of record in the Register's Office of Shelby County, Tennessee, which are required under applicable law to be so filed, to establish and make of public record, among other things, the boundary lines of the real estate encompassed therein, the boundary lines of the Lots, Parcels and Tracts as shown thereon, the boundary lines of the Common Areas or Community Open Spaces as shown thereon, roads or streets within the Property as shown thereon, easements and planting screens as shown thereon and certain restrictions and conditions relating to the Property encompassed therein as set forth thereon. The Developer will file a preliminary planned unit development plan in said Register's Office concerning the Property. As development under said plan progresses there will be filed for each phase to be accomplished in accordance with the preliminary plan a Final Phase Plan.

S4 4074

4. "Subdivide" shall mean to designate and establish the boundary lines of any of the Property by officially filing in the Register's Office of Shelby County, Tennessee a Final Phase Plan.

5. "Common Area" shall mean all real property designated by either the term "Common Area" or the term "Community Open Space" on any Final Phase Plan filed officially for the purpose of subdividing the Property.

6. "Lot" shall mean any plot of land designated for the development of a single family residence (attached or detached) as designated on any Final Phase Plan subdividing the Property.

7. "Parcel" shall mean any plot of land as shown on any Final Phase Plan of the Property upon which improvements for multifamily dwellings may be situated.

S4 4074

8. "Tract" shall mean any plot of land as shown on any recorded Final Phase Plan of the Property upon which improvements for non-residential uses may be situated.

9. "Developer" shall mean Whitehead Properties, Inc., a Tennessee corporation, its successors or assigns.

10. "Lot Owner" shall mean any person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, including the Developer, who owns a Lot within the Property upon which a single family residence may be constructed, but excluding any person or legal entity having any interest in any Lot solely as security for the performance of any obligation.

11. "Parcel Owner" shall mean any person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, including the Developer, who owns any Parcel of the Property upon which improvements for multifamily dwellings may be constructed, but excluding any person or legal entity having any interest in any Parcel solely as security for the performance of an obligation.

12. "Tract Owner" shall mean any person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, including the Developer, who owns any Tract of the Property upon which improvements for

non-residential uses may be situated, but excluding any person or legal entity having any interest in any Tract solely as security for the performance of an obligation.

S4 4074

13. "Dweller" shall mean a person that inhabits a multi family dwelling situated on a Parcel.

14. "Member" shall mean those persons entitled to membership in the Conservancy.

ARTICLE III

MEETING OF MEMBERS AND VOTING

1. Annual Meetings. The first annual meeting of the members shall be held within one year after the organizational meeting of the Conservancy, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter at a place and time established by the Board of Directors. If the day for the annual meeting of the members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

2. Special Meetings. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the membership.

3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than

ten (10) nor more than sixty (60) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Conservancy or supplied by such member to the Conservancy for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

S4 4074

4. Quorum. The presence at the meeting of persons holding, personally or by proxy, fifty (50%) percent of the entire number of votes that may be cast at the meeting shall constitute a quorum. If the required quorum is not present, the Board of Directors of the Conservancy may call another meeting, subject to the same notice proceedings aforesaid, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot, Parcel or Tract.

6. Voting and Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of a Lot or Parcel or Tract, there to be one (1) vote for each Lot, Parcel or Tract, except that the Developer shall be entitled to three (3) votes for each Lot or Parcel or Tract which it owns and which is officially subdivided at the time of the vote,

and ten (10) votes for each acre of land within the boundaries of the property described on Exhibit A to the Declaration that has not at the time of the vote been officially subdivided into Lots or Parcels or Tracts.

S4 4074

ARTICLE IV

BOARD OF DIRECTORS: SELECTION:
TERM OF OFFICE

1. Number. The affairs of this Conservancy shall be managed by a Board of five (5) directors, who shall be members of the Conservancy or nominated by entities that are members of the Conservancy; provided, however, that at all times during which the Developer owns five (5) or more Lots or one (1) or more acres of unsubdivided land, it shall be entitled to select one (1) designee who shall serve as an additional ex officio member of the Board of Directors with full entitlement to all rights and privileges commensurate therewith, with the exception that such ex officio member shall not be entitled to vote.

2. Term of Office. The term of office of directors shall be one (1) year.

3. Removal. Any director may be removed from the Board, with or without cause, by a majority of the votes cast by the members on such proposition. In the event of the death, resignation, or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

4. Compensation. No director shall receive compensation for any service he may render to the Conservancy. **S4 4074** However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

1. Nomination. Except for the first elected Board of Directors, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Conservancy. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Such nominations may be made from among members or non-members.

2. Election. At the election for the Board of **S4 4074** Directors the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes for each vacancy shall be elected. Cumulative voting is not permitted.

ARTICLE VI

MEETINGS OF DIRECTORS

1. Regular Meetings. Regular meetings of the Board of Directors shall be held periodically, without notice, on such date and at such place and hour as may be fixed from time to time by resolution of the Board.

2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Conservancy, or by any two Directors, after not less than three (3) days' notice to each Director, but such notice may be waived.

3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

S4 4074

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

1. Powers. The Board of Directors shall have power to:

(a) Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) Suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Conservancy. Such rights may also be suspended, after notice, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) Exercise for the Conservancy all powers, duties and authority vested in or delegated to this Conservancy and not reserved to the membership by other provisions of these By-Laws, the Charter of Incorporation, or the Declaration;

(d) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

(f) Establish the Land Use and Architecture Control Committee, and provide funds and personnel to support the function of same, as provided for in the Declaration.

S4 4074

2. Duties. It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the members who are entitled to vote;

(b) Supervise all officers, agents, employees and Committees of the Conservancy, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration, to:

(i) Fix the amount of the annual assessment against each Lot, Parcel and Tract at least sixty (60) days in advance of each annual assessment period;

(ii) Send written notice of each assessment to every owner subject thereto as soon as reasonably possible after the fixing of the amount thereof; and

(iii) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same;

S4 4074

(d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment or fine that may be a lien has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment or fine has been paid, such certificate shall be conclusive evidence of such payment;

(e) Procure and maintain adequate liability and hazard insurance on property owned by the Conservancy;

(f) Cause the Common Area to be maintained.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

1. Enumeration of Offices. The officers of this Conservancy shall be a President and Vice-President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

2. Election of Officers. The election of officers shall take place at the first meeting of the first elected Board of Directors and thereafter at the first meeting of the Board of Directors following each annual meeting of the members.

3. Term. The officers of this Conservancy shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner die, resign, or shall be removed, or otherwise be disqualified to serve.

4. Special Appointments. The Board may elect such other officers as the affairs of the Conservancy may require, **S4 4074** each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

8. Duties. The duties of the officers are as follows:

(a) President. The President shall preside at all meetings of the Board of Directors and shall see that orders and resolutions of the Board are carried out.

S4 4074

(b) Vice-President. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Conservancy and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Conservancy together with their addresses, and shall perform such other duties as required by the Board. Such duties, with the permission of the Board of Directors, may be delegated to others.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Conservancy and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Conservancy; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting. With the permission of the Board

of Directors the duties of the Treasurer may be delegated to others.

S4 4074

ARTICLE IX

BOOKS AND RECORDS

The books, records and papers of the Conservancy shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Charter of Incorporation and the By-Laws of the Conservancy shall be available for inspection by any member at the principal office of the Conservancy, where copies may be purchased at a reasonable cost.

ARTICLE X

ASSESSMENTS

As more fully provided in the Declaration, each member except the Developer is obligated to pay to the Conservancy annual and special assessments (and, in certain instances, limited assessments) which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum, and the Conservancy may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be

added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for **S4 4074** herein by non-use of the Common Area or abandonment of his Lot, Parcel or Tract.

ARTICLE XI

CORPORATE SEAL

The Conservancy shall have a seal in circular form having within its circumference the words: "Villages of Bennington Conservancy"; but the failure to affix such seal shall not impair the effectiveness of any instrument.

ARTICLE XII

AMENDMENTS

1. These By-Laws may be amended, at a regular or special meeting of the members at which a quorum is present by a majority of the votes cast upon such proposition.

2. In the case of any conflict between the Charter of Incorporation and these By-Laws, the Charter shall control; and in the case of any conflict between the Charter of Incorporation or these By-Laws and the Declaration, the Declaration shall control.

ARTICLE XIII

MISCELLANEOUS

The fiscal year of the Conservancy shall begin on the first day of January and end on the 31st day of December every year, except that the first fiscal year shall begin on the date that the Conservancy is formally organized.

STATE TAX
REGISTRATION FEE
APR 20 11 08 AM '81
\$53.00
SHELBY COUNTY REGISTER OF DEEDS
MARTIN

S 4 4 0 7 4