

This instrument prepared by
And return to:

Keith A. Novick
645 Pisgah Road
Eads, TN 38028

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE ENCLAVE AT SPARKLE CREEK P.D.**

THIS DECLARATION is made, published and declared this ___ day of _____, 2004, by Keith A. Novick (hereinafter referred to as the "Declarant" or the "Developer") in his individual capacity and as the Managing General Partner of the Novick Family Partnership, a Tennessee General Partnership (the "Partnership") and shall bind and obligate any and all persons, firms or corporations hereinafter acquiring any of the within described property.

WHEREAS, the Declarant and the Partnership are the fee simple owner of certain tracts of real property containing approximately 102.978 acres located in Shelby County, Tennessee, which are more particularly described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the Developer has caused to be prepared a plan for the development of the Property, to be known as "The Enclave at Sparkle Creek P. D." (the "Enclave") pursuant to which plan the Property shall be subdivided into residential lots; and

WHEREAS, the Developer has caused a plat of the Property to be filed in Plat Book ___, Page ___, in the Register's Office of Shelby County, Tennessee ("Plat"); and

WHEREAS, it is the intention of the Declarant that the lot Owners, and each and every person or other entity hereafter acquiring any interest in the Property be bound by certain covenants, restrictions, easements, assessments and liens governing and regulating the use and occupancy of the same which are hereby imposed upon the Property, and established, fixed, set forth and declared as covenants running with the land; and

WHEREAS, the Developer has designed the Enclave as a private development to create a natural park-like, wooded atmosphere with the minimum amount of modification of the existing terrain and vegetation. The lots are estate-sized lots located on private drives to be maintained by the Association of which the Lot Owners shall be Members, which drives shall have no gutters or sidewalks. Much of the present storm drainage shall continue to be carried in natural creeks, swales and drainage areas existing on the property. The Developer makes no warranty concerning the degree of rainwater inundation that may result on the aforementioned lots since said inundation can be expected with rainfall which exceeds the normal standards. Neither the Developer nor the Declarants shall have any liability for claims, losses or damage resulting from the degree of rainwater inundation which may affect any of the Lots in the Development.

Further, at the present time the Property is not served by sanitary sewer and until such time as sewer may be available, the Lots shall be served only by individual septic systems which shall be designed, installed and maintained by each individual Lot Owner. Each Lot Owner shall be solely responsible for verification of the suitability of their Lot for a septic system, which Developer recommends be determined by soil testing prior to the purchase of a Lot. Neither the Developer nor the Declarant shall have any liability to any Lot Owner for claims, losses or damage resulting from the design, installation, maintenance, or performance of any septic system or private sewage disposal system serving any lot, nor shall the Declarant or Developer have any liability to any Lot Owner for

claims, losses or damage resulting from the absence of any public sanitary sewer serving any of the Lots or the Development.

NOW, THEREFORE, in consideration of the premises, the Declarant does hereby publish and declare that all or any portion of the Property described in Exhibit "A" is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations (and subject to all easements, conditions, restrictions, etc., as set out in the Plat, Exhibit "B"), all of which are declared and agreed to be in furtherance of a plan for the development and improvement of the said Property, and the said covenants, conditions, restrictions, uses, limitations and obligations shall run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any person or legal entity acquiring or owning any interest in any portion of the said Property or any improvements thereon, their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I DEFINITIONS

The following words when used in this Declaration shall have the following meanings:

“Architectural Control Committee” shall mean and refer to the committee established pursuant to Article VII of this Declaration.

“Association” shall mean and refer to The Enclave at Sparkle Creek Homeowners Association, Inc., a nonprofit, non-stock corporation incorporated under the laws of the State of Tennessee, its successors and assigns. The Association's Charter and Bylaws are attached hereto, marked Exhibits "C" and "D", respectively, and made a part hereof.

"Common Improvements" shall mean all improvements thereon owned by the Association for the common use and enjoyment of the Members of the Association. The Common Improvements to be owned by the Association are as follows:

- (a) Subdivision entrance walls and improvement within the easement area depicted on Exhibit B, located on lots 29 and 30, adjacent to Pisgah Road.
- (b) The Pedestrian/Equestrian Trail designated as “Private Equestrian Pedestrian Easement” on Exhibit B (sometimes herein referred to as the “Trail”).
- (c) Perimeter fencing and landscaping along Lots 29, 30 and 31, adjacent to Pisgah Road.
- (d) The paved roadways (Lexington Manor Lane, Chelsea Meadow Cove and King’s Stable Cove) which serve the Lots in the Development as shown on Exhibit B together with all medians and “islands” located within the roadway system.

The areas within which these “Common Improvements” are situated are referred to as “Common Areas” and shall include the Trail.

"Declarant" shall mean Keith A. Novick, whose office is at 645 Pisgah Road, Eads, TN 38028, his successors and assigns. "Declarant" shall be synonymous with "Developer" for purposes of this Declaration.

"Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereto, as this Declaration may, from time to time, be amended in accordance with its terms.

“Development” shall mean and refer to the Enclave at Sparkle Creek P.D, Phase 2 together with such additional phases as may be included by amendment to this Declaration.

"Lot" shall mean and refer to the Lots of land designated with Numbers 20 through 52, inclusive, as shown on Exhibit "B" attached hereto. For all purposes hereunder, it shall be understood and agreed that Declarant and/or the Partnership shall be the Owner of all of said Lots, save and except only those particular Lots which Declarant conveys in fee simple title by recordable deed from and after the date hereof. Ownership of a Lot hereunder shall include an undivided Proportionate Interest in the Common Area owned by the Association.

“Lake Lot” shall mean and refer to any Lot in the Development on which a lake or pond is located which lake or pond is physically located on more than one lot and the use and maintenance of such lake or pond shall be shared by multiple Owners.

"Member" shall mean and refer to every Person who holds membership in the Association.

“Novick Property” shall mean and refer to that approximate 84 acre parcel owned by Keith A. Novick immediately north and east of (and adjacent to) the Property.

"Owner" or “Lot Owner” shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, provided, however, that the purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner. The owner of the Novick Property shall be deemed to be an Owner.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

“Property” or “Properties” shall mean that real property described in Exhibit "A" attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association. Declarant shall have the absolute right in the exercise of his sole discretion to subject additional, adjacent properties to the terms, provisions, rights, obligations, benefits and burdens of this Declaration by amendment to this Declaration (in which event the number of Lots, Owners and Members may increase). Such Amendment shall require no approvals from either the Association, the Board of Directors or any Owners or Members. In the event of such election by Declarant, and at such time as an amendment providing for such inclusion of additional property has been recorded, the total acreage as well as the number of Lots, Owners and Members shall be modified accordingly.

"Improvements" shall mean the structures, walls, pavement, plantings and other additions built or placed on the Lots. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within said Lot. In the event that, by reason of construction, settlement, reconstruction or shifting of the Improvements, any minor part of the Improvements reasonably intended for a particular Lot lie outside that Lot, an easement of use shall apply thereto in favor of the Lot to be benefited.

“Proportionate Share” or “Proportionate Interest” shall mean the fractional share required to be paid by each Owner equivalent to one (1) divided by the total number of Lots in the Development. Initially, the Proportionate Share of each Lot Owner shall be 1/33rd.

ARTICLE II PROPERTY

Section 1. Property Subject to Declaration. That certain real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration located in Shelby County, Tennessee, and

which is more particularly described in Exhibit "A" attached hereto and made a part hereof. Declarant may, by amendment to this Declaration duly recorded in the Shelby County Register's Office include additional land as a part of the "Property". It is anticipated that the adjacent property to the south of the Property initially described on Exhibit A may become a part of the overall Development, subjected to this Declaration and divided into additional Lots. It is also contemplated that all or some portions of the Novick Property may, at Declarant's option, be included as well. The incorporation of additional property into the Development and the concurrent amendment of this Declaration by Declarant in order to expand the definition of the "Property" (herein defined) shall require no further consents or approvals of either the Lot Owners or the Association.

Section 2. Roads and Drainage. The roads and drainage within The Enclave at Sparkle Creek are, and shall remain, private roads and drainage, and shall not be dedicated to the City of Memphis, or any other governmental body. By remaining private, the responsibility for payment of maintenance and repair expenses for said roads and drainage shall remain the responsibility of the individual Lot Owners, and be paid for by assessments levied by the Association as provided herein. The Association shall be responsible for the maintenance and usage of the roads. Notwithstanding anything herein to the contrary, this paragraph shall not apply to those easements designated as "public" easements.

The Association shall be responsible for the continued maintenance of the roads including any removal of debris caused by falling trees or limbs. The Association shall act promptly in clearing the roads so that the orderly ingress and egress to a particular Lot shall not be hindered.

ARTICLE III THE ASSOCIATION

Section 1. Members. Every Person, as defined, who is a record Owner of a fee or undivided fee interest of any Lot within the Property shall be a Member of the Association, as defined, provided, however, that anyone who holds such interest solely as security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot within The Enclave at Sparkle Creek. Ownership of such Lot shall be the sole qualification for membership. Although the Novick Property is not subject to this Declaration, the owner of the Novick Property shall be deemed to be an Owner entitled to all of the benefits appurtenant to such status and additionally shall be deemed a Member owning one (1) lot. For so long as the owner of the Novick Property is Keith A. Novick, the vote appurtenant to this lot shall be in addition to the weighted vote afforded the Declarant pursuant to Section 2 below.

Section 2. Voting rights. The voting rights of the membership shall be appurtenant to the ownership of a Lot, each Owner of a Lot being entitled to one (1) vote for each Lot owned, except the Developer, which shall be entitled to three (3) votes for each Lot owned by it. After the expiration of five (5) years from the date of the conveyance of the first Lot from Developer to the purchaser, Developer shall only be entitled to one (1) vote for each Lot still owned by it.

Section 3. Secured Parties. No individual or legal entity holding title to a Lot as security for any debt or obligation shall be considered as Owner of such Lot, and such individual or entity shall not be entitled to membership in the Association or to cast a vote on any question or matter affecting the administration of the Association.

Section 4. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of the Members representing a fifty-one percent (51%) majority of the total votes cast, in person or by proxy (provided a quorum exists), shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of statute or of the corporate Charter, or this Declaration, or of the Bylaws, a different vote is required, in which case such express provision shall govern and control. The vote for any membership which is owned by more than one person may be exercised by any of them

present at any meeting unless any objection or protest by any other owner of such membership is noted at such meeting. In the event all of the co-owners of any membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be delinquent in any payment due to the Association.

Section 5. Proxies. A Member may appoint any other Member or the Developer or any other person permitted by law or by the Bylaws as his proxy. In no case may any Member (except the Developer) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by the Association's Bylaws.

Section 6. Quorum. The presence, either in person or by proxy, of Members representing at least fifty-one percent (51%) of the total votes entitled to be cast shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

ARTICLE IV. PROPERTY RIGHTS

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

- (a) The right of the Association to maintain the Common Improvements within The Enclave at Sparkle Creek;
- (b) The right of the Association, in accordance with its Charter and Bylaws, to borrow money for the purpose of improving the Common Improvements which the Association is to maintain;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Improvements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, transfer or mortgage shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes hereof has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance of such dedication or transfer.
- (d) The rights of the Association to promulgate reasonable rules, regulations and fees concerning the use of the Common Improvements or Common Area in The Enclave at Sparkle Creek.
- (e) The right of the Association to suspend any enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and, the total votes entitled to be cast shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

Section 2. Fencing/Landscape Easement. Declarant hereby reserves itself and the Association an easement over and upon Lots 29, 30 & 31 for the purpose of erecting, maintaining, repairing and replacing a fence along Pisgah

Road. The easement will be thirty (30) feet in width which shall be measured from the western edge of the Pisgah Road right of way.

Section 3. Easement for Utilities. The utilities serving the various parcels (electric, water, gas, phone, TV cable, etc.) are located, generally in the private roads. Declarant hereby reserves for itself and the Association an easement for continued location of said utilities where installed.

A five (5) foot utility easement is hereby reserved along all boundaries of each Lot in the Property. A ten (10) foot utility easement is hereby reserved along the entire outside perimeter of the Property.

Section 4. Access to Kentwood Estates Drive. The Declarant hereby restricts access from Lots 47 and 48 to Kentwood Estates Drive for reasons of security. Any access to Kentwood Estates Drive or to Pisgah Road from these Lots shall only be by a grant in writing from the Architectural Control Committee.

Section 5. Traffic Flow. The Board of Directors shall have the authority to promulgate rules and regulations and post signage controlling the flow of traffic within the Development and the use of the Common Improvements and easement areas. The Owners, by acceptance of a deed to a Lot, agree for themselves and their guest and invitees that: (i) the traffic laws of the municipal authorities shall govern the Development provided that the Board may impose stricter rules and regulations if deemed appropriate and (ii) neither the Board nor the Association shall have any liability to any Owner or Member for claims, loss or damage alleged to have resulted from the failure to impose or enforce traffic regulations.

Right of Way. Within the Development both on the private drives and on the common easement areas, horse traffic shall always have the right of way. Owners acknowledge that horses have a "flight reflex" when startled or intimidated and, accordingly, all vehicles, bicycles, riding mowers, and joggers shall (whether on a private drive or a common easement area) yield to riders on horseback.

Section 6. Entrance Feature Easement. An easement is hereby reserved at the location designated on Exhibit B on Lots 29 and 30 for construction, maintenance and reconstruction of an entrance feature; said entrance feature may include brick or masonry walls, footings, signs, landscaping, irrigation, gates, gate operating devices, and such other improvements as Declarant deems desirable, together with utilities serving the aforescribed improvements.

Section 7. Landscape and Fencing Easement. An easement twenty five (25) feet in width for the installation, maintenance, repair and replacement of landscaping and fencing is hereby reserved and imposed upon each Lot in the Property along Lexington Manor Lane, Chelsea Meadow Cove, and King's Stable Cove.

Section 8. Easement for Pedestrian and Equestrian Trail. An easement for pedestrian and equestrian traffic and usage (the "Trail") is hereby imposed at the locations designated on Exhibit B. Declarant shall have the right in the exercise of its sole discretion to change, modify, release, relocate and otherwise alter the location of the Trail at any time prior to the earlier of (I) the date on which twenty (25) Lots in the Development have been conveyed by Declarant or (ii) December 31, 2008.

ARTICLE V MAINTENANCE AND REPAIR

Section 1. Association Responsibilities. The Association shall provide and pay for all maintenance (including all repairs and replacements) and expenses for private roads, "islands" and medians within the roadway

system, the entrance structures to be built by the Developer, as well as the irrigation, lighting, and the landscaping at the entrance and within the Common Areas. The entrance(s) to Pisgah Road shall have a gate (or gates) which will be operated by an electronic system and telephone lines to each residence on each Lot. The Association shall own and maintain this system.

Section 2. Individual Lot Owners.

- (a) Interior Maintenance. Each Owner of a Lot shall be responsible for all interior maintenance, painting, repair and upkeep on his Lot and the improvements thereon.
- (b) Exterior Maintenance. As shown on Exhibit "B" attached hereto, there will be thirty-three (33) residential Lots. Each Owner of a Lot shall be responsible for exterior maintenance, painting, repair and upkeep on his Lot. No exterior maintenance, repairs or replacements or additions shall be commenced for the improvement of an individual Lot unless permission is obtained from the Architectural Control Committee, as hereinafter defined
- (c) Drainage. All Lots have natural drainage. All maintenance expenses associated with the drainage on each Lot are the responsibility of the Lot Owner. Any modification to the natural drainage flow shall be designed by an engineer according to the Final Plat of The Enclave at Sparkle Creek, P.D. and approved by Declarant or the Architectural Control Committee.
- (d) Responsibility of Owners for Pedestrian and Equestrian Easement Area. Each Owner of a Lot shall be solely responsible for the maintenance of those portions of the Pedestrian and Equestrian Easement on such Owner's lot, provided however that in the event repairs are required which are of a capital nature (i.e. replacement of pavement, brick or iron fencing or culverts) then the cost of such capital expenditures shall be paid by the Association. It is the intention of this Declaration that wood fencing be repaired if necessary, downed trees, brush and debris be promptly removed, holes filled and the easement area be kept clear at all times by the Owner of the servient tenement. Failure of an Owner to implement required maintenance, repairs or replacements as aforesaid shall constitute a violation of this Declaration and the cost of remediation (upon the approval of a majority of the Board of Directors) shall be a lien against such Lot enforceable as a delinquent "Assessment" pursuant to this Declaration.

In the event an Owner of any Lot in the Property shall fail to maintain the premises and improvements situated thereon or implement other required repairs or maintenance in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, or restore the Lot and the exterior of the building and any improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VI
ASSESSMENTS

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

time when the assessment fell due.

Section 2. Annual Assessments and Carrying Charges of the Association. Each Member of the Association shall pay to the Association an annual sum (herein sometimes referred to as "assessments" or "carrying charges") equal to the Member's Proportionate Share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:

- (a) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any.
- (b) The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any;
- (c) The cost of extended liability insurance and the cost of such other insurance as the Association may effect;
- (d) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements; and
- (e) The estimated cost of repairs, maintenance and replacements of the private roads, gate, monuments, irrigation, fence, and landscaping within The Enclave at Sparkle Creek and any other item for which the Association may be responsible.

Except as provided in Section 11 of this Article VI, the Board of Directors of the Association shall determine the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require as provided in the By Laws. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a letter signed by an officer of setting forth whether the assessment on a specified Lot has been paid.

Although it is expressly confirmed that the Novick Property shall not be subject to the Declaration, the Novick Property shall have the benefit of (and Declarant expressly reserves for the benefit of the Novick Property) the right to use and enjoy all of the easements, common areas, Common Improvements, roadways, the Trail and utility easements provided for in this Declaration, all of which shall be deemed easements appurtenant to the Novick Property. The Declarant, Keith A. Novick, as owner of the Novick Property, shall be deemed to own one Lot and, as such Lot Owner, shall be a Member of the Association. Anything to the contrary notwithstanding herein, until such time as the Novick Property may be subdivided and all or any portion of it subjected to this Declaration (if such should ever occur) Novick shall have no liability to the Association for payment of any Assessments or fees of any nature which may be provided for hereunder or otherwise. In the event of such subdivision, individual lots within said subdivision which are subjected to this Declaration and have access to the Common Areas, easements, roads and Common Improvements shall be deemed to be "Lots" and the owners shall be "Members" of the Association, responsible thereafter for payment of Assessments.

Section 3. Special Assessments. In addition to the regular assessment authorized by this Article, the Association may levy in any assessment year a special assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement for which purposes as the Board of Directors may consider necessary, provided that such assessment shall have the assent of the Members representing two thirds of the total number of votes eligible to be cast. A meeting of the appropriate Members shall be duly called for this purpose, written notice of which shall be sent to all Members at least ten (10) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting.

Section 4. Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of Members or Property of Members, the Board of Directors, acting pursuant to this section, may declare an emergency assessment in such amount and payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount and time of payment, shall be governed by all other provisions of this Declaration. Such assessment shall be borne pro rata by all Members of the Association. The Board of Directors shall be fully protected and in no event liable for any mistake in judgment hereunder if the emergency assessment is made in good faith.

Section 5. Non-Payment of Assessments. Any assessment levied Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereafter provided, thereupon become a continuing lien upon s belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then owner, their his heirs, devisees, personal representatives and assigns. To evidence the lien of any unpaid and delinquent Board of Directors shall prepare a written notice setting out the amount of the unpaid indebtedness, the name of the Owner of the Lot and description of the Lot. Said notice shall be signed by a member of the Board and recorded in the Shelby County Register's Office. The personal obligation of the Member to pay such assessment shall, however, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration or the Bylaws, of any installment thereof, may be maintained without foreclosing or waiving the lien created herein.

Any assessment levied pursuant to this Declaration or any installment thereof which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Tennessee and may by resolution of the Board of Directors subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the said Board may fix. The Association may bring an action at law against the Member personally obligated to pay the same or foreclose the lien against the Lot or Lots subject to prior mortgages or deeds of trust upon the Lot or Lots then belonging to said Member; in either of which events the Association may collect from the said Member interest, all costs and reasonable attorneys' fees.

For the purpose of enforcing the lien of any unpaid and delinquent assessment each Lot Owner grants the Board of Directors of the Association irrevocably the power to sell his Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded mortgage or deed of trust upon the Lot. The Association is hereby authorized to take any and all courses of action available to them for collection of the assessment which the laws of the State of Tennessee allow. Any such sale shall be made after first advertising the sale of said property for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of Shelby, State of Tennessee, giving notice of the time and place of such sale and by written notice of the time and place of such sale to the Owner of the Lot at his last known address. Any sale of a Lot to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption, including the statutory right of redemption, homestead and dower and all other exemptions, all of which are expressly waived by the Lot Owners; and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the Property and the expenses of litigation, attorneys' fees and sales commission; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust (unless sold subject to said mortgage or deed of trust); and third, to the payment of all amounts due the Association under the terms of the Declaration and By Laws; and the balance, if any, to the Lot Owner whose Lot is sold, and his assigns. Upon any default in the payment of any assessment, the Board of Directors shall have the right to all rents issues and profits from the Lots and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession in the same manner as a mortgagee entering into possession following default. The Association may enforce its lien by whatever means available, including the

power of sale granted herein or filing suit for foreclosure in the appropriate court.

All rights, remedies, and privileges granted to the Board of Directors or a Lot Owner, pursuant to any terms, provisions and covenants or conditions of the Declaration and Bylaws shall be deemed to be cumulative, and the exercise of anyone or more shall be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party by the Declaration and Bylaws or at law or in equity.

The Association may notify the holder of the first mortgage on Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the Owner of such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of ninety (90) days.

Section 6. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

Section 7. Priority of Lien. The lien established by this Article shall have preference over any other assessments, liens, judgements or charges of whatever nature, except the following:

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

Section 8. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Lot shall be subordinate to and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such interest made in good faith and for value received, provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a foreclosure or any other proceeding in lieu of foreclosure. Any such delinquent assessments which are extinguished pursuant to the foregoing provision may be reallocated and assessed to all Owners as a common expense, including the purchaser at foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment which said lien, if any, claimed shall have the same effect and be enforced in the same manner as provided herein.

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

Section 9. Additional Default. Any recorded first mortgage secured by a Lot in The Enclave may provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby), but the failure to include such a provision in any such mortgage shall not affect the validity or priority thereof, and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 8 of this Article shall not be altered, modified, or diminished by reason of such failure.

Section 10. Uniform Value of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or quarterly basis, as determined by the Board of Directors.

Section 11. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on a date selected by Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Until December 31, 2005, the maximum assessment shall be One Hundred Fifty and No/100 Dollars (\$150.00) per Lot per month. Until December 31, 2006, the Declarant shall have the sole authority to determine whether an assessment shall be levied. After December 31, 2006, the assessment shall be fixed by the Board of Directors as set out in Section 2 of this Article VI.

ARTICLE VII ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. An "Architectural Control Committee" is hereby established. The initial committee shall consist of Keith A. Novick, _____ and _____. These three individuals shall serve for a period of five (5) years, or until they resign from the Committee by written notice to the Board of Directors of the Association. Upon the expiration of five (5) years from the date hereof, or the earlier resignation of Novick, _____, and _____, the Board of Directors of the Association shall then appoint the Architectural Control Committee, which shall be composed of three (3) or more individual Lot Owners or any qualified person commissioned by the Association. The affirmative vote of a majority of the membership of the Architectural Control Committee shall be required to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein.

Section 2. Approvals Necessary, Rules of Committee and Remedies for Violation. With the exception of Developer, the following activities are prohibited without the prior written consent of the Architectural Control Committee and until such time as plans and specifications (including a description of any proposed new use) shall have been submitted to and approved in writing by the Architectural Control Committee:

- (a) No preliminary grading, clearing or site work shall be undertaken;
- (b) No structure of any kind or nature (including but not limited to buildings, outbuildings, fences and swimming pools) or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the Lots within The Enclave at Sparkle Creek;
- (c) No existing structure, fence or barrier upon any Lot shall be altered in any way which changes the exterior appearance (which includes but is not limited to changes in paint color and re-roofing) thereof;
- (d) There shall be no additions, attachments, or deletions to improvements, nor shall there be any changes in landscaping, nor shall any new use be commenced on any Lot.

Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Control Committee, but in any event shall be prepared and/or signed by an architect on the list of approved architects promulgated by the Architectural Control Committee and shall include:

- (a) A site plan of the Lot showing the overall nature and location of all improvements, including front, sides, and rear setbacks of all structures; fences, gates or barriers, and location of driveway, turn-arounds, parking spaces, utility meters, HVAC equipment, refuse storage, and screening;
- (b) Said site plan shall also show the minimum ground floor area of a single family dwelling, exclusive of porches and garages, to be four thousand (4,000) square feet for a one story dwelling or the minimum ground floor area of three thousand (3,000) square feet for a one and one-half story or a two story dwelling; provided, however the Architectural Control Committee shall have the right to lower the minimum square

footage requirement for any Lot for the orderly development of and integrity of The Enclave;

- (c) Existing and proposed grading plan, tree clearing plan and proposed landscaping and hardscaping plans for the Lot;
- (d) Mailboxes (which shall be constructed of brick or masonry materials matching the residence and headwalls) and front yard exterior light standards, the design, material, and location to be specified by the Architectural Control Committee;
- (e) Where a drainage pipe may be required for a driveway, such pipe shall be concrete and shall include masonry head walls of decorative stone used in the theme of the Development or brick which matches the residence on the Lot. Headwall shall be required on each end of the drive culvert; and;
- (f) Architectural plans shall include floor plans, all exterior elevations, building sections and details of cornice, front entrance, porches, rails, and other details, etc. of special or unique importance or character. Said plans shall include adequate data and detail as to the overall kind, style, shape, height, materials, and quality of the proposed structure and other improvements.

Note: The Architectural Control Committee may require additional data or more detailed plans should the items noted above not be adequately covered or should a design of unique quality or merit require such for full review and approval.

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

In the event the Architectural Control Committee fails to approve or disapprove any plans and specifications or other requests as herein provided within forty five (45) days after submission thereof, the same shall be deemed to have been approved as submitted and no further action shall be required.

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

If fifteen (15) days after the notice of such violation, the Owner or Owners of the Lot upon which such violation exists shall not have taken reasonable steps towards the removal or

termination of the same, the Association by its officers or directors shall have the right through its agents and employees to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the costs thereof shall be a binding personal obligation of such Owner as well as a lien upon the Lot in question upon the recording of such with the Office of the Register of Shelby County, Tennessee.

Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by the Architectural Control Committee, the Architectural Control Committee shall, upon written request of the Owner thereof, issue a letter of compliance in form suitable for recordation, identifying such structure and the Lot on which such structure is placed, stating that the plans and specifications, location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation and recording of such letter shall be at the expense of the Owner or Owners of such Lot. Any letter of compliance issued in accordance with the provisions of this paragraph shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such letter shall be conclusive evidence that all structures and the use or uses described therein comply with all requirements of these restrictions and all other requirements as to which the Architectural Control Committee exercises any discretionary or interpretive powers.

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

The Architectural Control Committee shall use its best efforts in the exercise of its duties; however, the Committee, its members Association shall not be liable for any decision made in the exercise of its duties, or for any comments, suggestions and/or redesign fees resulting from the Design Review Process.

Any agent of Developer or the Architectural Control Committee reasonable times, enter upon and inspect any Lot and any improvements thereon for the purposes of ascertaining whether the use of such Lot and the maintenance, construction, or use of structures thereon are in compliance with the provisions of these restrictions, and no such persons shall be deemed to have committed a trespass or other wrongful act by reason of entry or inspection.

The Association or any Owner of any Lot contained within The Enclave shall have the right to enforce by any proceeding at law or equity all conditions, restrictions, covenants, reservations and easements herein or hereinafter contained or otherwise contained in any deed to any Lot. Failure by any Owner to enforce any of such proceedings shall in no event be deemed a waiver of the do so thereafter.

Should a request to the Committee come from a Committee member, the other members of the Committee shall select a disinterested Lot Owner to take the place of the Committee member making the request.

ARTICLE VIII. RESTRICTIVE COVENANTS

Section 1. Residential Use. All of the Lots in the Property shall be used, exclusively, for private residential purposes.

Section 2. Prohibited Uses and Nuisances. In order to provide for a congenial occupation of the homes

within the Development and to provide for the protection of the values of the entire development, the use of the residences shall be in accordance with the following provisions:

- (a) Said property is hereby restricted to residential dwellings for single family residential use. No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other building of temporary character shall be used on any portion of said Property at any time as a permanent residence, either temporarily or permanently.
- (b) Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions, and provisions hereof and all easements, restrictions, and covenants set out in the Plat attached hereto as Exhibit "B".
- (c) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain, during the period of the sale of said Lots, upon such portion of the premises as Declarant deems necessary, such facilities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the sale of said Lots, including, but without limitation, a business office, storage area, construction yard, signs, model units, and sales office.
- (d) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any of said Lots, except that dogs, cats, or other household pets may be kept, and (subject to the provisions of Paragraph (e) below) horses may be kept on certain lots, provided that none of the preceding animals are kept, bred, or maintained for any commercial purpose. In all instances, dogs shall be restrained within fenced area or kept under leash. All animals shall be provided with shelter from the elements and properly cared for. The type of fencing, shelter and the standard of care for animals shall be determined by the Board of Directors of the Association, it being the intention that dogs be kept in a secure environment, protected from the elements and have available a dry, climate controlled environment providing shelter from the elements.
- (e) Horses may not be kept, raised, bred, boarded on any lots with the exception only of Lots 20 – 25 (inclusive), 28 – 32 (inclusive) and 35- 38 (inclusive) subject to the following restrictions and limitations.
 - (1) Only one (1) horse may be kept, maintained or cared for on any of the aforesaid Lots unless such Lot (either by itself or through combination with other Lots) has a minimum area of 3.5 acres, in which event two (2) horses may be kept on such lot. Under no circumstance shall an Owner maintain or keep more than two (2) horses on any Lot in the Development, provided, however, that in the event an Owner acquires more than six (6) acres, then such Owner may petition the Board of Directors to permit additional horses and the Board may grant or withhold its consent in the exercise of its sole discretion.
 - (2) No Owner shall keep a horse on their Lot unless said horse is owned by the Lot owner or an individual residing on the Lot.
 - (3) No horses shall be permanently "pastured" and all equine shall be provided with adequate shelter from the elements, which shall include a stable constructed, in all aspects, in compliance with the architectural requirements of this Declaration. Any barn, stable or approved shelter shall be constructed with an automatic fly or insect control system.
 - (4) The location of any "turn out" areas shall be designated on the site plan submitted in connection with obtaining architectural approvals and shall be located in a manner to prevent areas which may become extensively grazed from being visible from the street or adjacent lots. Horses shall not be "turned out" or pastured in a front yard without the express consent of the Architectural Control Committee.

- (5) No horse shall be brought onto a Lot or the Property by an Owner, Member, or a member of (or guest of) the immediate family of an Owner unless such horse has been tested within the preceding 180 days for equine infectious anemia ("EIA") by a Tennessee licensed veterinarian by administering a "Coggins Test" or such other comparable test as is then being utilized to detect the presence or absence of "EIA" in livestock, and shall furnish evidence of a "negative" result of such testing upon the request of any Lot Owner . In the event an equine animal owned by a Lot Owner tests "positive" for "EIA" then such animal shall immediately be removed from the Property by the Owner. The provisions of this Article may be specifically enforceable by injunction, or otherwise, in the event an Owner refuses or neglects to comply with the terms contained herein and attorneys' fees shall be paid by the defaulting party.
- (6) Nothing contained in this Article (or elsewhere in this Declaration) shall, in any manner, limit the number of horses which Declarant may elect to maintain on the property retained by Declarant adjacent to the Development or in any manner restrict, control, impact or otherwise have any effect upon the Declarant's ability to keep, breed, board, and/or maintain horses on Declarant's adjacent property.
- (e) No advertising signs (except one (1) of not more than five (5) square feet "for rent" or "for sale" sign per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said Property, nor shall said Property be used in any way or for any purposes which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof. No business activity of any kind whatever shall be conducted in any building or in any portion of said Property; provided, however, the foregoing covenants shall not apply to the business activities, signs, and billboard or the construction and maintenance of buildings, if any, of Declarant, its agents, and assigns, during the development and sales period of Lots in The Enclave at Sparkle Creek nor shall it ever restrict the breeding and sales of horses on the Novick Property which is not subject to this Declaration. This restriction does not prohibit an office in the home used solely by an occupant of the home.
- (f) All equipment, utility meters, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of the private drives and street. All rubbish, trash, or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.
- (g) Without prior written approval and the authorization of the Architectural Control Committee, no exterior television or radio antennas or satellite dishes of any sort, with the exception of a satellite dish no larger than eighteen inches (18") in diameter if located out of public view, shall be placed, allowed, or maintained upon any portion of the improvements located upon the Property nor upon any structure situated upon the Property, nor upon any structure situated upon the Property, should any such master system or systems be utilized and require any such exterior antenna.
- (h) No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.
- (i) No recreation vehicles or commercial vehicles, including, but not limited to, boats, boat trailers, mobile or modular homes or structures, house trailers, camping trailers, motorcycles, all terrain vehicles, pick-up trucks, vehicles identifying businesses by name or by including logos on the exterior, or similar type items, shall be kept other than in the enclosed garage or otherwise completely screened from the view of neighbors or from the roads.
- (j) Trees, shrubs, vines, debris, and plants which die shall be promptly removed from such Lots. Developer and/or the Association, at their option and their discretion, may mow and have dead trees

and debris removed from such Lots and the Owner of such Lot shall be obligated to reimburse Developer and/or the Association for the cost of such work should he refuse or neglect to comply with the terms of this paragraph. Each Lot shall be maintained as to present a neat and attractive manner. It is acknowledged that a park-like, wooded character is deemed appropriate, yet any installed lawn areas, driveways, or hardscape elements, which are viewed from the public or common area shall be kept mowed and cleared at regular intervals by the Owner thereof so as to maintain the same in a neat and attractive manner.

- (k) No standing or partially standing trees which are obviously dying or dead shall be allowed to remain within thirty (30) feet of any right-of-way. If a Lot Owner fails to remove said tree or trees within thirty (30) days of written notification from the Association, the Association may, at its option, go onto the Lot, remove said tree or trees and assess the cost against the Lot Owner.
- (l) No obnoxious or offensive trade or activity shall be carried on upon any Lot in this development nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners within The Enclave at Sparkle Creek.
- (m) No building material of any kind or character shall be placed or stored upon any of said Lots until the Owner is ready to commence improvements. Building materials, dumpsters, portable toilets or other construction related appurtenances shall not be placed or stored in the private road or within thirty (30) feet of the edge of the road pavement. No construction shall be commenced until appropriate erosion controls are in place, and such erosion control (silt fencing, staked bales, etc.) shall be maintained during the time of construction. Owners shall promptly clear any silt or construction debris from the roads or easement areas.
- (n) Exterior security or spot lights shall be directed toward the ground and away from adjacent Lots or private roads.
- (o) After the initial approval of a plan for a residence has been approved, no tree larger than six (6) inches in diameter measured twelve (12) inches from the grade shall be removed, unless it is dead and poses a threat to the safety and health of the individuals residing in the residence, without the approval of the Architectural Committee.
- (p) All fences located in front of the residence or which face the private road shall be approved by the Architectural Committee. Privacy and sight-proof fences are not allowed on the property line. No fence of any type shall be located within thirty (30) feet of the private drive pavement.
- (q) The Enclave at Sparkle Creek is not serviced by an overall, public sewer system. Each Lot Owner shall be responsible for the installation and maintenance of an individual septic system or sewer system which shall be approved by the local health authority. Neither the Developer, the Declarant, the Board of Directors (or any individual Board members), or the Association shall have any liability for claims, losses or damage alleged to result from the failure of any individual septic system installed by an Owner or the absence of a public sewer system, all of which liability shall be deemed waived by each Owner by acceptance of a deed to a Lot in the Development.
- (r) The minimum square footage for a residence shall be four thousand (4,000) heated and cooled square feet if a one story residence. A one and one-half or two story residence shall have at least four thousand (4,000) heated and cooled square feet and shall, additionally, have at least three thousand (3,000) square feet on the ground floor. The Architectural Committee shall however, in its sole discretion, have the discretion and ability to vary the minimum square footage for any specific lot. Declarant makes no representation regarding the size of homes to be constructed in The Enclave and expressly reserves the right to reduce the minimum square footage required for residences which the

Architectural Control Committee deems architecturally appropriate for the development.

- (s) Auxiliary structures approved by the Architectural Control Committee shall be located within the buildable setbacks and shall match the principal residence by incorporation of the same building materials (brick, paint colors, roofing, etc.)
- (t) Any security gate installed by any Lot Owner on any Lot must meet the requirements of the fire code of the Shelby County Fire Department and be thirty (30) feet from the private road pavement.
- (u) There shall be no violation of any rules which may, from time to time, be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the Bylaws authorized to adopt such rules.
- (v) Hunting shall be prohibited on the Property and the discharge of firearms or weapons for sport is prohibited.
- (w) All utilities installed by Lot Owners (except Declarant) shall be located underground.

Section 3. Building Setbacks. Except as otherwise provided herein, building setback lines shall be a minimum of one hundred twenty five (125) feet from the street rights of way. Principal structures shall be a minimum of forty (40) feet from any side or rear property line or from the Trail. Accessory structures shall be a minimum of twenty (20) feet from any side or rear property line or the Trail. Notwithstanding the preceding, the Architectural Control Committee shall have the right in the exercise of its sole discretion to modify the aforesaid setbacks as to individual Lots in the Development in the event the Architectural Control Committee determines that a variance is appropriate based upon the configuration of the Lot or Lots or specific drainage considerations, or to preserve existing vegetation, together with the overall planned improvements for such Lot. Upon request of the Lot Owner, the Architectural Control Committee shall execute documentation prepared by the Lot Owner or their agent, in recordable form, confirming the variance if granted.

Section 4. Additional Restrictions Affecting Lake Lots Only. In addition to the preceding restrictions, limitations and covenants, the following restrictions and covenants shall apply to Lake Lots within the Development:

- (a) The use of gasoline powered vehicles or motorized boats or vehicles on the lake is prohibited. This restriction shall be perpetual in nature and is not subject to modification by the Owners under any circumstance.
- (b) No fencing, improvements or obstruction shall be permitted which would impair the access to a Lake by an Owner. Access to a Lake shall only be permitted to the Owners of the Lots on which the Lake is located unless such lake abuts a common area or has been designated a Common Improvement by an amendment to this Declaration and in such event access shall be limited to the Trail or such location as is specified by the Architectural Control Committee.
- (c) No dock or pier shall be constructed which encroaches more than twenty (20) feet into the Lake beyond the high water mark and any such improvement shall be subject to the requirements of architectural approvals as set forth in this Declaration.
- (d) During construction of any improvements and at all times thereafter, adequate silt control mechanisms (including silt fencing, staked straw bales and such other measures as are determined by Declarant to be appropriate) shall be implemented, utilized and maintained in order to prevent any siltation of the Lake. Sod may be required by Declarant to prevent siltation of swales and areas abutting, or in the proximity of) the Lake;

- (e) No mechanical devices such as fountains, lights or similar items may be installed in the Lake without the approval of Declarant and the Owners of all Lake Lots;
- (f) There shall be a perpetual easement outside the perimeter of the Lake and immediately adjacent thereto which shall be over and upon that property located within twenty (20) feet of the high water mark of the Lake (based upon the initial configuration of the Lake) which easement shall be for the benefit of Declarant and the Lake Lot Owners and shall be for the purpose of maintenance of the Lake.
- (g) Building minimum back lines shall be a minimum of fifty (50) feet from the high water mark of the Lake.
- (h) The physical configuration of the Lake shall in no event be modified without the approval of all Lake Lot Owners and the Declarant.
- (i) The Common Easement Areas for landscape maintenance located within twenty (20) feet of the high water mark of the Lake is expressly reserved for the benefit of Declarant and the Lake Lot Owners. No Owner shall, within such easement areas or at other locations whether within or without designated easement areas, place or permit any structures, fencing, plants or other material which may damage or interfere with the appearance and maintenance of the Lake. Further, all fencing and landscaping within the easement areas reserved for such shall in any event be subject to the approval of Declarant. Owner shall not install any improvements or modify any existing grades in such a manner as would impair the positive, natural flow of water from an Owner's Lake Lot or adjacent lots or a Common Easement Area. The easement area and drainage facilities on each Lake Lot shall be maintained continuously by the Owners of such Lake Lot.

ARTICLE IX
COMMON EASEMENTS

Section 1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot or such portion or portions of the Common Improvements adjacent thereto or as between adjacent Lots due to unintentional placement, settling or shifting of Improvements constructed, reconstructed or altered thereon.

Section 2. Easement for Utilities. Etc. Easements for utilities are as shown on the recorded plat.

ARTICLE X.
INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable common private improvements (including the common fences within The Enclave at Sparkle Creek development). The Board shall also obtain a public liability policy covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000.00) limit per occurrence, and a Thirty Thousand Dollar (\$30,000.00) minimum property damage limit.

Premiums for all insurance for the Common Improvements shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the

policy in determining whether the insurance at least equals the full replacement cost of the improvements. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance or by the Association, in the event a Lot Owner is not the responsible party.

Cost of insurance coverage obtained by the Association for the Common Improvements for which the Association is responsible shall be included as an Assessment as defined in Article VII.

The Association's Board of Directors shall make every reasonable effort to secure insurance policies that will provide for the following:

- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, Architectural Control Committee, its manager, the Owners, and their respective tenants, servants, agents, and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
- (iii) that no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;
- (iv) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (v) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

Section 2. Individual Insurance - Repair and Reconstruction. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance on the Lot and structures constructed thereon for full replacement cost. In the event of damage or destruction by fire or other casualty, the Owner shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to repair or rebuild such damage or destroyed portions of the improvements in a workmanlike manner in conformance with the original plans and specifications of the building (including landscaping). In the event the Owner refuses or fails to so repair or rebuild any and all such damage to his improvements within thirty (30) days, the Association, by and through its Board of Directors, is hereby authorized by such Owner to either (i) repair and rebuild the improvements in a good and workmanlike manner in conformity with the original plans and specifications or (ii) raze the damaged or affected improvements and clear the area of all damaged improvements, restoring the site to a landscaped, attractive condition. The Owner shall then repay the Association in the amount actually expended for such repairs, and the Association will have a lien securing the payment of same identical to that provided for in Article VII, securing the payment of said sums expended and subject to the power of sale and foreclosure as set forth in said Article.

The individual Owners shall make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Association, other Lot Owners, and their respective

tenants, servants, agents and guests.

The individual Owners shall, upon request, furnish a certificate of insurance to the Association or its manager.

ARTICLE XI MORTGAGEE'S RIGHTS

Upon request, the Association shall make available to any Lot Owner and lender, and to any holder, insurer, or guarantor of any first mortgage, current copies of this Declaration, the Bylaws, and other rules concerning the affairs and management of The Enclave at Sparkle Creek, and the books, records, and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours.

Upon request, the Association shall furnish to any holder of a first mortgage a financial statement for the Association's immediately preceding fiscal year.

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the unit number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of;

- (a) any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage;
- (b) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
- (c) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Owners' Association;
- (d) any proposed act that requires the consent of a specified percentage of mortgage holders.

The consent of at least sixty-seven percent (67%) of the votes and the consent of the Declarant, as long as it owns the Novick Property or any land subject to this Declaration, and the approval of the eligible holders of first mortgages on Lots to which at least sixty-seven percent (67%) of the votes subject to a mortgage appertain, shall be required to terminate the Association.

The consent of at least sixty-seven percent (67%) of the votes and of the Declarant, as long as it owns any land subject to this Declaration, and the approval of eligible holders of first mortgages on individual Lots to which at least fifty-one percent (51%) of the votes subject to a mortgage appertain, shall be required to materially amend any provisions of the Declaration, Bylaws, or Charter of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following; (i) voting; (ii)

assessments, assessment liens, not including a subordination of said lien; (iii) reserves for maintenance, repairs, and replacement of the Common Improvements (iv) insurance or fidelity bonds; (v) responsibility for maintenance and repair of the Property; (vi) boundaries of any residential Lot; (vii) imposition of any right of first refusal or similar restrictions of the right of any Owner to sell, transfer or otherwise convey his Lot; (viii) any provisions included in the Declaration, Bylaws, and Charter of Incorporation which are for the express benefit of holders, guarantors or insurers of first mortgages on residential units, which provisions do not set out a required number of votes to amend the particular provision.

ARTICLE XII
GENERAL PROVISIONS

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten (10) years each. Unless specifically prohibited herein, this Declaration may be amended by an instrument signed by Owners holding not less than sixty-seven percent (67%) of the votes of the membership at any time. Any amendment must be properly recorded to be effective. During the first two (2) years from the date of the recording of this Declaration, any amendment must also be approved by the Declarant.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES THE RIGHT FOR A PERIOD OF FIVE (5) YEARS FROM THE DATE HEREOF TO UNILATERALLY AMEND THIS DECLARATION TO THE REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL, AND FOR THE REQUIREMENTS OF ANY MORTGAGE LENDER OR FOR ANY REASON THAT THE DECLARANT, IN THE EXERCISE OF HIS SOLE AND ABSOLUTE DISCRETION, DEEMS ADVISABLE FOR THE ORDERLY DEVELOPMENT OF THE ENCLAVE AT SPARKLE CREEK.

Section 2. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

Section 3. Enforcement. The Declarant, the Association, or any Member shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or to recover damages, and against the land to enforce any lien created by these covenants, and failure by the Association or any Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement by the Association shall be chargeable to the Owner of the Lot violating these covenants and restrictions and shall constitute a lien on the Lot, collectible in the same manner as assessments hereunder.

Section 4. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

Section 5. Waiver. No restriction, condition, obligation or provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 6. Gender. Etc. Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse, and the use of any gender shall be deemed to include all genders.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused these presents to be signed by the officer duly authorized so to do as of the day and year first above written.

Keith A. Novick

NOVICK FAMILY PARTNERSHIP

BY: _____

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared Keith A. Novick to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

WITNESS my hand and Notarial Seal at office in said State and County this ____ day of _____, 2004.

Notary Public: _____

My Commission Expires:

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, personally appeared Keith A. Novick, with whom I am personally acquainted and who, upon oath, acknowledged himself to be the Managing General Partner of Novick Family Partnership, the within named bargainer, a joint venture, and that he as such partner, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the partnership by himself.

WITNESS my hand and Notarial Seal at office in said State and County this ____ day of _____, 2004.

Notary Public: _____

My Commission Expires:

JOINDER OF MORTGAGEE

FIRST ALLIANCE BANK, herein called the mortgagee, as the holder of a Deed of Trust on the property described on Exhibit __ of the Declaration of Covenants, Conditions and Restrictions, which Deed of Trust is recorded under Register's Number _____, in the Register's Office of Shelby County, Tennessee, joins in submitting said property to the said Declaration of Covenants, Conditions and Restrictions. Said Deed of Trust remains prior to any liens created by said Declaration of Covenants, Conditions and Restrictions.

FIRST ALLIANCE BANK

By: _____
Title: _____

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, a Notary Public within and for said state and County, personally appeared _____ with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the _____ of First Alliance Bank, the within named bargainer, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by subscribing the name of the bank by himself as such officer.

WITNESS my hand and Notarial Seal at office in said State and County this _____ day of _____, 2004.

Notary Public: _____

My Commission Expires:

EXHIBIT A

Lots 20 through 33 (inclusive), The Enclave at Sparkle Creek P.D. as shown on plat of record in Plat Book ____, Page ____ in the Register's Office of Shelby County, Tennessee, to which Plat reference is hereby made for a more particular description of said Lots.

EXHIBIT B

PLAT

TO BE ATTACHED PRIOR TO RECORDATION OF DECLARATION

EXHIBIT C

**CHARTER OF THE ENCLAVE HOMEOWNER'
ASSOCIATION, INC.**

The undersigned person under the Tennessee Nonprofit Corporation Act, adopts the following charter for the above listed corporation:

1. The name of the corporation is: **THE ENCLAVE HOMEOWNER'S ASSOCIATION, INC**
2. This corporation is a mutual benefit corporation.
3. This corporation is not a religious corporation.
4. (a) The complete address of the corporation's initial registered office is 645 Pisgah Road, Eads, Shelby County, Tennessee, 38018.

(b) The name of the initial registered agent, to be located at the address listed in 4(a), is Keith A. Novick.
5. The name and complete address of the incorporator is: Keith A. Novick, 645 Pisgah Road, Eads, Tennessee 38018.
6. The complete address of the corporation's principal office is: 645 Pisgah Road, Eads, TN 38028.
7. This corporation is a nonprofit corporation.
8. The corporation will have members.

9. The corporation may be dissolved with the assent given in writing and signed by not less than sixty-seven percent (67%) of the members. Upon dissolution of the corporation, other than incident to a merger or consolidation, the assets of the corporation shall be dedicated to an appropriate public agency to be used purposes similar to those for which this corporation, created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.
10. No director shall be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director, except as otherwise provided in subparagraph (A), (B), and (C) of T.C A. Section 48-52-102 (b) (3). The foregoing shall not eliminate or limit the liability of a director for any action or omission occurring prior to the date when this paragraph becomes effective.

WITNESS my hand this ____ day of _____, 2004.

Keith A. Novick, Incorporator

EXHIBIT D

BY LAWS OF THE ENCLAVE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

Section 1. Name. The name of this corporation is THE ENCLAVE HOMEOWNERS' ASSOCIATION, INC. Its principal place of business is 645 Pisgah Road, Eads, TN 38028. The corporation may have such other offices within the State of Tennessee as the Board of Directors or the Members may from time to time designate.

ARTICLE II

Section 1. Applicability. These Bylaws and thereof shall be applicable to all lots and Members within the residential development known as THE ENCLAVE AT SPARKLE CREEK P.D.

ARTICLE III

Section 1. Eligibility. The Owner or Owners of a lot, who have become such in compliance with all of the requirements and conditions contained in the Declaration of Covenants, including these Bylaws, shall be entitled to attend and vote at all meetings of the Association. The Declarant shall be considered to be the Owner of each lot which is unsold by it. Ownership of a lot shall be sole qualification for membership in the Association.

Section 2. Voting Rights. The Owner or Owners of a lot shall be entitled to one (1) vote for each lot owned at all meetings of the Association, provided however that the Declarant shall be entitled to three (3) votes for each lot owned by it. After the expiration of five (5) years from the date of the conveyance of the first lot from Declarant to a purchaser, Declarant shall be entitled to one (1) vote for each lot still owned by it. Where two or more persons own a lot, the vote allocated to that Lot shall be cast by the one authorized by such two or more Owners, and in the event of failure of such authorization, no vote shall be recorded for that lot. Where only one of two or more Owners of a lot is present in person at a meeting, such one shall be presumed to be authorized by all Owners of said lot and shall be entitled to cast the vote with respect for that lot. Where one person or a group of persons owns more than one lot, such person or group shall be entitled to cast one (1) vote for each lot owned.

ARTICLE IV

Section 1. Place of Meetings. Meetings of the membership shall be held at the principal office or the place of business of the Association or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 2. Annual Meetings. The annual meetings of the Members of the Association shall be held at 7:00 P.M. on the second Tuesday in October of each year, beginning in 2005. At such meeting there shall be elected by secret written ballot of the Members a Board of Directors in accordance with the requirements of Section 5 of Article V of these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the Board of Directors or upon a petition signed by Members representing at least ten percent (10%) of the total number of votes entitled to be cast on any issue proposed to be considered at the proposed special meeting having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member of record, at his address as it appears on the membership book of the Association, if any, or if no such address appears, at his last known place of address, at least ten (10) days but no more than two (2) months prior to such meeting. Service may also be accomplished by the delivery of any such notice to the Member at his last known address by deposit in the box or slot for the united States mail. Notice by either such method shall be considered as notice served. Attendance by a Member at any meeting of the Members shall be a waiver of notice by him of the time, place and purpose thereof.

Section 5. Quorum. The presence, either in person or by proxy, of Members representing at least fifty-one percent (51%) of the total votes entitled to be cast with respect to any question, shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

Section 6. Adjourned Meeting. If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of Members representing a fifty-one percent (51%) majority of the total votes cast, in person or by proxy, provided a quorum exists, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute or of the Charter of Incorporation, or the Declaration, or of these Bylaws, a different vote is required, in which case such express provision shall govern and control. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

Section 8. Proxies. Any Member may appoint any other Member or the Developer or any other person permitted by law or by these Bylaws as his proxy. In no case may any Member (except the Developer) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by these Bylaws.

Section 9. Action Without Meeting. Whenever the vote of Members at a meeting thereof is required or permitted to take any action in accordance with any statute, the Declaration or these Bylaws, such meeting and vote may be dispensed with if all Members who would have been entitled to vote upon such action receive a written ballot from the Association. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approvals shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equal or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Section 10. Order of Business. The order of business at all regularly scheduled meetings of the Members shall be as follows:

- (a) Roll call and certificate of proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of Officers, if any.
- (e) Reports of committees, if any.
- (f) Unfinished business.
- (g) New business.
- (h) Election or appointment of inspectors of election.
- (i) Election of directors.

In the case of a special meeting, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of the meeting.

ARTICLE V

Section 1. Number of Qualification. The affairs of the Association shall be governed by the Board of Directors composed of at least three (3) persons and not more than seven (7) persons, a majority of whom (after the second annual meeting of Members) shall be Members of the Association.

Section 2. Initial Directors. The initial Directors shall be elected by the Developer and need not be Members of the Association. The names of the Directors who shall act as such from the date upon which the Declaration is

recorded in the Register's Office of Shelby County, Tennessee, until the first annual meeting of the Members or until such time as their successors are duly chosen and qualified are as follows:

Keith A. Novick;
Thomas Marchbanks; and
Bruce Baskette.

Section 3. Power and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and the residential planned development and may do all such acts and things as are not by law or by these by laws directed to be exercised and done by the Members. The powers and duties of the Board of Directors shall include, but not be limited to, the following:

To provide for:

- (a) Care and upkeep of the roads, sewers, utilities, wall, fence, common area, and any other properties charged to the care of the Association, including establishing reserves for repairs or replacements.
- (b) Establishment and collection of assessments and/or carrying charges from the Members and for the assessment and/or enforcement of liens therefor in a manner consistent with law and the provisions of these Bylaws and the Declaration.
- (c) Designation, hiring and/or dismissal of the personnel necessary for the good working order of LaGrange and to provide services for the community in a manner consistent with law and the provisions of these Bylaws and the Declaration.
- (d) Promulgation and enforcement of such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of LaGrange, all of which shall be consistent with law and the provisions of these Bylaws and Declaration.
- (e) Election of an Architectural Control Committee.

Section 4. Nomination. 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 Association. 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.

Section 5. Election and Term of Office. The term of the Directors named herein shall expire when their successors have been elected at the first annual meeting of Members and are duly qualified. At the first annual meeting of the Members, the Members shall determine the number of Directors consistent with these Bylaws, who shall constitute the Board of Directors to serve until the next annual meeting and until their successors have been elected and duly qualified. The term of office of each Director thereafter shall be for a period of one (1) year and until their successors shall have been elected and hold their first meeting.

Section 6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the membership shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a director until a successor is elected by the Members at the next annual meeting.

Section 7. Removal of Directors. At a regular meeting, or special meeting duly called for such purpose, any Director may be removed with or without cause by the affirmative vote of the majority of the entire membership of record and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. The term of any Director who becomes more than sixty (60) days delinquent in payment of any assessments and/or carrying charges due the Association shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 6 of this Article.

Section 8. Compensation. No compensation shall be paid to Directors for their services as Directors. After the first annual meeting of the Members, no remuneration shall be paid any Director who is also a Member of the Association for services performed for the Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before the services are undertaken.

Section 9. Organizational Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a majority of the whole Board of Directors shall be present.

Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held during each calendar year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph; at least two (2) days prior to the day named for such meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the President on two (2) days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the date, time and place (as hereinabove provided), but not necessarily the purpose, of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third (1/3) of the Directors.

Section 12. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time, place and purpose thereof. If all the Directors are present and remain present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 13. Quorum. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such meeting, any business, which might have been transacted at the meeting as originally called, may be transacted without further notice.

Section 14. Action Without Meeting. Any action of the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to take such action without a meeting. Such written consent or consents describing the action taken and signed by each Director shall be filed with the minutes of the proceedings of the Board of Directors. If all Directors consent to taking such action without a meeting, the affirmative vote of the number of Directors that would be necessary to take such action at a meeting is the act of the Board.

Section 15. Fidelity Bonds. The Board of Directors may require that all Officers and employees of the Association handling or responsible for the Association's trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

ARTICLE VI

Section 1. Designation. The Principal Officers of the Corporation shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. Prior to the first annual meeting of Members, the Officers of the Association need not be Members of the Association. The Directors may appoint an Assistant Secretary, an Assistant Treasurer, and such other Officers as in their judgment may be necessary. The offices of Secretary and Treasurer may be filled by the same person.

Section 2. Election of Officers. The Officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board of Directors.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any Officers may be removed either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 4. President. The President shall be the Chief Executive Officer of the Association. In the event he is also a member of the Board of Directors, he shall preside at all meetings of the Members and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of president of an association, including, but not limited to, the power to appoint committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated to him by the Board of Directors.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Members of the Association; he shall have custody of the seal of the Association, if any; he shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct; and he shall, in general, perform all duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the

Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VII

Section 1. Liability and Indemnification of Officers and Directors. The Association shall indemnify every Officer and Director of the Association and Architectural Control Committee against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any Officer or Director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding) if approved by the then Board of Directors of the Association to which he may be made a party by reason of being or having been an Officer or Director of the Association, whether or not such person is an Officer or Director at the time such expenses are incurred. The Officers and Directors of the Association shall not be liable to the Members of the Association for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Officers and Directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association of LaGrange (except to the extent that such Officers or Directors may also be Owners lots within the subdivision), and the Association shall indemnify and forever hold each such Officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Officer or Director of the Association or former Officer or Director of the Association may be entitled.

Section 2. Common or Interested Directors. The Directors shall exercise their powers and duties in good faith and with a view to the interest of the Association and the planned development. No contract or other transaction between the Association and one or more of its Directors, or between the Association and any corporation, firm or association (including the Developer) in which one or more of the Directors of this Association are Directors or Officers or are pecuniarily or otherwise interested, is either void or voidable because such Director or Directors are present at a meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if any of the conditions specified in any of the following subparagraphs exist:

(a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; and

(b) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Common or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction with like force and effect as if he were not such Director or Officer of such other corporation or not so interested.

ARTICLE VIII

Section 1. Management and Common Expenses. The Association, acting by and through its Board of Directors, shall manage, and operate the affairs of the Association and, for the benefit of the lots and the Owners

thereof, shall enforce the provisions hereof and shall pay out of the common expense fund herein and elsewhere provided for, the following:

- (a) The cost of such insurance as the Association may effect.
- (b) The cost of providing such legal and accounting services as may be considered necessary to the operation of the Enclave.
- (c) The cost of any and all materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like, which the Association secures in the discretion of the Board of Directors or by the vote of the Members shall be deemed necessary or proper.
- (d) The cost of the maintenance or repair on any lot in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Area or to preserve the appearance or value of LaGrange or is otherwise in the interest of the general welfare of all Owners of the lots; provided, however, that no such maintenance or repair shall be undertaken without a resolution by the Board of Directors and not without reasonable written notice to the Owner of the lot proposed to be maintained and provided, further, that the cost thereof shall be assessed against the lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall } sent promptly to the then Owner of said lot at which time the assessment shall become due and payable and a continuing lien and obligation of said Owner.
- (e) All other items which are listed as responsibilities of the Association as found in the Declaration.

Section 2. Duty to Maintain. Except for maintenance requirements herein imposed upon the Association, the Owner of any lot shall, at his own expense, maintain the interior and exterior of any improvements on his lot, including all driveways and any and all equipment, and fixtures therein situate, and its other appurtenances, in good order, condition and repair, and in clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his lot and appurtenances. All exterior maintenance is subject to approval of the Architectural Control Committee.

Section 3. Right of Entry. For the purpose solely of performing any of the repairs or maintenance required or authorized by these Bylaws, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Association through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the Owner c occupant, to enter upon any lot at any hour considered to be reasonable under the circumstances.

ARTICLE IX

Section 1. Fiscal Year. The fiscal year of the Association shall begin on the first day of January every year, except for the first fiscal year of the Association, which shall begin at the date of incorporation. The commencement day of the fiscal year herein established shall be subject to change by the Board of Directors, should corporate practice subsequently dictate.

Section 2. Books and Accounts. Books and accounts of the Association shall be kept under the direction of the Treasurer in accordance with good accounting practice. The same shall include books with detailed accounts, in chronological order, of receipt and of the expenditures affecting The Enclave and its administration and shall specify the maintenance and repair expenses incurred. That amount of any assessment required for payment of any capital

expenditures of the Association shall be credited upon the books of the Association to the "paid-in-surplus" account as a capital contribution by the Members.

Section 3. Reports. The Association shall furnish its Members, and the holder of first mortgages requesting same within ninety (90) days from the date of close of each fiscal year, with an annual financial statement, including the income and disbursements of the Association.

Section 4. Inspection of Books. The books and accounts of the Association, and vouchers accrediting the entries made thereupon, shall be available for examination by the Members of the Association, and/or their duly authorized agents or attorneys, and to the institutional holder of any first mortgage on any lot and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interest as Members.

Section 5. Execution of Association Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the Association by such Officers, agents, or other persons as are from time to time so authorized by the Board of Directors.

Section 6. Employment of Management Company. The Association shall be authorized to employ a management company to aid the Association in carrying out its duties and responsibilities. Prior to passage of control of the Association from the Developer, no management or service contract shall be entered into unless there is a right of termination, without cause, upon ninety (90) days' written notice.

ARTICLE X

Section 1. Amendments. These Bylaws may be amended by the affirmative vote of Members representing a majority (unless the Declaration calls for a greater number with respect to a particular clause) of all votes entitled to be cast at any meeting of the Members duly called for such purpose, and only after thirty (30) days' prior written notice to the institutional holders of all first mortgages on the lots in LaGrange. Amendments may be proposed by the Board of Directors or by petition signed by Members representing at least thirty percent (30%) of the total number of votes entitled to be cast. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

ARTICLE XI

Section 1. Notice to Board of Directors. Any Owner of any lot in the planned development who mortgages such lot shall promptly notify the Board of Directors of the name and address of his mortgagee and, if requested so to do, shall file a conformed copy of such mortgage with the Board of Directors. The Board of Directors shall maintain suitable records pertaining to such mortgages.

Section 2. Definition. As used in this Article, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees and the term "mortgage" shall include a Deed of Trust. As used generally in these Bylaws, the term "institutional holder" or "institutional mortgagee" shall include banks, trust companies, insurance companies, savings and loan associations, pension funds and any corporation, including a corporation of, or affiliated with, the United States government, or any agency thereof.

ARTICLE XII

Section 1. Resident Agent. The resident agent shall be designated as the person authorized to accept service of process in any action relating to two or more lots or to the Common Areas.

Section 2. Notices. Unless another type of notice is herein or elsewhere specifically provided for, any and all notices called for in the Declaration or these Bylaws shall be given in writing.

Section 3. Severability. In the event any provision or provisions of these Bylaws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 4. Waiver. No restriction, condition, obligation or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 5. Captions. The captions contained in these Bylaws are for convenience only and are not a part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of the Bylaws.

Section 6. Gender, Etc. Whenever in these Bylaws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

Section 7. CONFLICTS. THESE BYLAWS ARE SUBORDINATE TO ALL PROVISIONS OF THE DECLARATION. ALL OF THE TERMS HEREOF, EXCEPT WHERE CLEARLY REPUGNANT TO THE CONTEXT, SHALL HAVE THE SAME MEANING AS IN THE DECLARATION. IN THE EVENT OF ANY CONFLICT BETWEEN THESE BYLAWS AND THE DECLARATION, THE PROVISIONS OF THE DECLARATION SHALL CONTROL, AND IN THE EVENT OF ANY CONFLICT BETWEEN THE AFORESAID DECLARATION AND ANY OF THE LAWS OF THE STATE OF TENNESSEE, THE PROVISIONS OF THE STATUTE SHALL CONTROL.