

DECLARATION OF COVENANTS AND RESTRICTIONS FOR CHARLESTON TRACE TOWNHOMES AND BY LAWS FOR THE BOARD OF DIRECTORS

RETURN TO
PIONEER TITLE AGENCY, INC.
513 GEORGIA AVENUE
CHATTANOOGA, TN.

06/25/96 MISC

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This declaration is made this 25th day of June, 1996, by GLASSCOCK DEVELOPMENTS, INC. a Tennessee corporation; hereinafter the corporation shall sometimes be collectively referred to as the "Developers."

RECITALS

Developers are owners of the real property described and shown on plat of record in Plat Book 54, Page 116, in the Register's Office of Hamilton County, Tennessee, and have created a residential community known as the CHARLESTON TRACE TOWNHOMES with open spaces and other common properties for the benefit of the community; and

Developers desire to provide for preservation of values and amenities in the community and for the maintenance of said open spaces and other common properties; and to this end, desire to subject the real property described in Article II, to the covenants, restrictions, easements, affirmative obligations, charges, and liens, hereinafter set forth, each and all of which is and are hereby declared to be for the benefit of the property and each and every Owner of any and all parts thereof; and

Developers have deemed it desirable, for the efficient preservation of the values and amenities in the community, to delegate and assign to the owners of the 36 units of Charleston Trace Townhomes the power and authority of holding title to and maintaining and administering the Common Properties and administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

Developers herein establish an association to be called Charleston Trace Townhomes Owners Association, for the purpose of exercising the above functions and those which are more fully set out hereafter;

PREPARED BY WILLIAM D. JONES
ATTORNEY AT LAW
513 GEORGIA AVENUE
CHATTANOOGA, TN.

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DECLARATION

NOW THEREFORE, the Developers subject the real property described in Article II, to the terms of this Declaration and declare that the same is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (sometimes referred to as "the Covenants") hereinafter set forth.

ARTICLE I

DEFINITIONS

THE FOLLOWING WORDS AND TERMS, WHEN USED IN THIS DECLARATION, OR ANY SUPPLEMENTAL DECLARATION (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.01 Association. "Association" shall mean Charleston Trace Townhomes Owners Association.

1.02 Board of Directors. Board of Directors or Board shall mean the governing body of the Association established and elected pursuant to this Declaration.

1.03 Common Expense. "Common Expense" shall mean and include (1) expense of administration, maintenance, repair or replacement of the Common Properties; (2) expenses agreed upon as Common expenses by the Association; (3) expenses declared Common Expenses by the provisions of this Declaration; and (4) all other sums assessed by the Board pursuant to the provisions of this Declaration.

1.04 Common Properties. "Common Properties" shall mean those areas of land with any improvements thereon which are shown on the recorded plat as Community Lot No. 37 and easements appurtenant thereto and required to be maintained by the Association, and are intended for the common use and development of all Owners. Each Lot shall have as an appurtenance thereto a non-severable, undivided 1/36th interest in Community Lot No. 37.

1.05 Covenants. "Covenants" shall mean the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens set forth in this Declaration.

1.06 Declaration. "Declaration" shall mean this Declaration of Covenants and Restrictions for Charleston Trace Townhomes and BY LAWS for same, and any Supplemental Declaration filed pursuant to the terms hereof.

1.07 Developers. "Developers" shall mean Glasscock Developments, Inc., a Tennessee corporation.

1.08 Dwelling Unit. "Dwelling Unit" shall mean a townhome situated upon the Properties designated and authorized for use and occupancy by a single family.

1.09 Existing Land. "Existing Land" shall mean the Real Property described in Article II hereof.

1.10 First Mortgage. "First Mortgage" shall mean a recorded Mortgage with priority over other mortgages.

1.11 First Mortgagee. "First Mortgagee" shall mean a beneficiary, creditor or holder of a First Mortgage.

1.12 Lot or Lots. "Lot or Lots" shall mean any improved or unimproved plat of land shown as a Lot upon any recorded map of any part of the Properties, with the exception of Common Properties.

1.13 Member or Members. "Member or Members" shall mean any or all Owner or Owners who are Members of the Association.

1.14 Mortgage. "Mortgage" shall mean a deed of trust, as well as a Mortgage.

1.15 Mortgagee. "Mortgagee" shall mean a beneficiary, creditor, or holder of a deed of trust, as well as a holder of a Mortgage.

1.16 Owner or Owners. "Owner or Owners" shall mean the recorded owner or owners, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any Lot situated upon the Properties but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the Mortgagee, unless and until such Mortgagee has acquired title pursuant to foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of any owner. The Developers may be an Owner.

1.17 Property or Properties. "Property or Properties" shall mean the Existing Land which is subject to this Declaration or any Supplemental Declaration under the provisions hereof.

1.18 Record or To Record. "Record" or "To Record" shall mean to record pursuant to the laws of the State of Tennessee relating to the recordation of deeds and other instruments conveying or affecting title to real property.

ARTICLE II

BOOK 4 (11) PAGE 020

2 of 3

**PROPERTIES, COMMON PROPERTIES
AND IMPROVEMENTS THEREON**

2.01 Existing Land. The real property which is, and shall be held, transferred, sold, conveyed, leased, and occupied, subject to these covenants, is located in Hamilton County, Tennessee, and is more particularly described as follows:

Located in the Third Civil District of Hamilton County, Tennessee: Lots One (1) through Thirty-six (36) inclusive, Charleston Trace Townhomes, as shown on plat of record in Plat Book 54, Page 116, in the Register's Office of Hamilton County, Tennessee.

2.02 Common Properties and Improvements Thereon. Being Lot Thirty-seven (37), Community Lot, and easements appurtenant thereto, as shown on plat of record in Plat Book 54, Page 116, in the Register's Office of Hamilton County, Tennessee.

A. The Board may, with a simple majority vote, improve the Common Properties with such other improvements as they deem desirable.

ARTICLE III

ASSOCIATION

3.01 Membership. Every person or entity who is a record Owner of a fee simple interest in any lot which is subject to this Declaration shall be a Member of the Association, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a member of the Association. Membership shall automatically be transferred to the new owner upon the conveyance of any Lot and recording of the Deed of Conveyance in the Register's Office of Hamilton County, Tennessee, plus, payment of any association initiation fees, assessments, or dues. Membership shall be appurtenant to ownership of any Lot which is subject to assessment.

3.02 Voting Rights. The Association shall have one class of voting membership.

A. Lot Owners shall have full voting privileges at the Annual Association Meeting concerning all Common Properties, improvements, changes to this Declaration, changes to the Board of Directors, President of the Association, Vice-President of the Association, Secretary-Treasurer, and any interest concerning the Association. Occupants who are not an owner of a unit shall have no vote or voice in the affairs of the Association.

In no event shall more than one vote be cast with respect to any Lot. When an owner signs a proxy such vote shall be counted when such proxy is in a written instrument delivered to the Secretary of the Association before the vote is counted.

ARTICLE IV

THE BOARD OF DIRECTORS AND OFFICERS

4.01 Board of Directors. The administration of the Property on behalf of the Association shall be conducted by a Board of Directors ("board") which shall consist of Ten natural persons of legal age, each of whom shall be a member in good standing of the Association and will maintain such representation during membership on the Board.

4.02 Initial Board of Directors. The Developer shall act as the Board of Directors during the first 12 months following the date of this Declaration or until 50 percent of the units or lots of Charleston Trace Townhomes have been sold, whichever occurs first. The Developer shall have all powers and authority to act which are granted to the Board of Directors in this Declaration.

4.03 Election. At each annual meeting, subject to the provisions of Section 4.13 hereof, the Association shall elect those members of the Board, President, Vice-President, and Secretary-Treasurer as required under Sections 4.03 and 4.04 who shall serve the terms set out under Section 4.03; provided, however, the members of the Board elected to succeed the prior elected officers may be elected at a special meeting duly called and specifically called for that purpose by the Board, the Board elected at that special meeting to serve until the first annual meeting of the Association held thereafter. Five members of the board shall be elected every other year. The President shall be elected in alternating years with the Vice-President.

4.04 Term. Members of the Board shall serve for a term of one year. Five members shall be elected every other year. The Members of the Board, President, Vice-President and Secretary-Treasurer shall serve until their respective successors are duly elected and qualified, or until their death, resignation or removal. The President, Vice-President and Secretary-Treasurer shall serve for a term of two years.

4.05 Resignation or Removal. Any member of the Board, President, or Vice-President, Secretary-Treasurer may resign at any time by giving written notice to the President or Vice President should the resigning member be the President. Any member of the Board or elected officer may be removed from elected office by a two-thirds (2/3rds) majority affirmative vote of the Association except that a vacancy on the Board shall be deemed to exist in the event of the death of a member, the disability of a member which, in the opinion of a majority of the Board, renders such member incapable of performing his elected duties, or in the event a member shall cease to be a member of the Association. Whenever there shall occur a vacancy on the Board for any reason, the remaining members shall elect a successor member to serve until the next annual meeting of the Association or a Special Meeting called for filling vacancies at which time said vacancy shall be filled by the Association for the unexpired term.

4.06 Compensation. The members of the board and elected officers shall receive no compensation for their services unless expressly provided for by the Association but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties.

4.07 Powers and Authority by the Board. The Board and elected officers, for the benefit of the property and the Association shall enforce the provisions of this Declaration, these By-Laws, and the Rules and Regulations governing the property. Subject to any provision herein, the Board and Elected Officers shall have the power and authority to acquire and pay for the following, which shall be deemed Common Expenses of the Association:

A. Water, sewer, electrical, and other necessary utilities for the Common Properties.

B. Legal and accounting services necessary or advisable in the operation of the Property and the enforcement of this Declaration, these By-Laws, and any rules and regulations made pursuant thereto.

C. Painting, maintenance, repair, replacement and landscaping of the Common Properties. The Board shall also have the right from time to time to acquire and dispose of by sale or otherwise and without the necessity of approval by any Owner, furnishings and equipment and other personal property for the Common Properties and to provide maintenance, repair and replacement thereof.

D. Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments that the Board is required to secure or pay for pursuant to the terms of this Declaration, these By-Laws or any Rules or Regulations promulgated hereunder or which, in its opinion, shall be necessary or advisable for the operation of the Property or for the enforcement of this Declaration, these By-Laws, or the Rules and Regulations.

The Board shall have the exclusive right to contract for all goods, services, including security, and insurance, payment for which is to be made from Common Expenses.

4.08 Additional Powers of the Board. The Board shall have the right to acquire, operate, lease, manage, trade and otherwise deal with the Common Properties as may be necessary or convenient in the operation and management of the Common Properties, and in accomplishing the purposes set forth herein.

4.09 Meetings of the Board. Meetings of the Board shall be held at such places within the State of Tennessee as the Board shall determine at least once per quarter. Five members of the Board, the President or Vice President, and the Secretary-Treasurer (or his appointee from the Board) shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board. Meetings of the Board shall be chaired by the President or Vice-President of the Association and the minutes shall be recorded by the Secretary-Treasurer of the Association (or an appointee of the Board). Any action required to be or which may be taken by the Board may be taken without a meeting of the Board pursuant to a written consent, setting forth the action so taken, signed by a majority of the members of the Board.

4.10 Special Meetings. Special meetings of the Board may be called by the President of the Association or by any two Board members.

4.11 Notice of Meetings. Regular meetings of the Board may be held without call or notice. The person or persons calling a special meeting of the Board shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which need not specify the purpose for which the meeting is called. If an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

4.12 Waiver of Notice. Any members of the Board may, at any time, waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member of the Board at any meeting thereof shall constitute a waiver of notice of such meeting unless a Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called and does so object by delivering a written document to that effect.

4.13 Fiscal Year. The fiscal year shall be determined by the Board.

4.14 Special Committees. Special Committees shall be appointed by the President. The Board shall have rights to call for the formation of committees by motion.

4.15 Rules and Regulations. The Board shall have the power and right to adopt and amend rules and regulations for the purpose of governing the details of the operation and use of common properties and setting forth restrictions on, and requirements respecting the use and maintenance of the Common Properties. Copies of the Rules and Regulations shall be furnished to each Owner prior to the time the same shall become effective.

4.16. Limitation on Capital Additions, Etc. Except as permitted in Article 4.07(e) and Article XI, the Board shall authorize no structural alterations, capital additions to, or capital improvements of the Common Properties, any of which require an expenditure in excess of One Thousand (\$1,000.00) Dollars without approval of the majority vote of the Association; provided, however, that the Board shall have the power to make any such structural alterations, capital additions to, or capital improvements of, the Common Properties as are necessary, in the Board's reasonable judgment, to preserve or maintain the integrity thereof without obtaining such approval, if in the opinion of the Board an emergency exists which should be corrected before a meeting of the Association could be reasonably called and held.

4.17. Failure to Insist on Strict Performance Not Waiver. The failure of the Board or its agents to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions in this Declaration of these By-Laws, or the Rules and Regulations or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction, right, option or notice; but such term, covenant, condition or restriction, right, option or notice shall remain in full force and effect.

ARTICLE V

THE ASSOCIATION; MEETINGS, OFFICERS, ETC.

5.01 Quorum. The presence in person or by proxy at any meeting of the Association of two-thirds (2/3) of the Owners of Lots subject to assessment in response to notice to all Owners properly given in accordance with Sections 5.02 or 5.03 of the By-Laws, as the case may be, shall constitute a Quorum. Unless otherwise expressly provided in this Declaration, any action may be taken at any meeting of the Association upon the affirmative vote of persons entitled to cast a two-thirds majority of the votes which are represented at such meeting. Proxy vote representation shall be recognized and counted, should members not submit a Proxy then a vote "For" the recommendation of the Board will be assumed.

5.02. Annual Meeting. There shall be an annual meeting of the Association on the First Monday of September at 6:00 P.M. at the Charleston Trace Townhomes or at any place or time (but not more than thirty days (30) before or after such date) so designated by the Board. The Secretary-Treasurer shall present a review of expenses for the prior year and a Budget for the coming year of any pertinent actions passed by the Board.

5.03. Special Meeting. Special meetings of the Association may be held at any time and at any reasonable place to consider matters which require the approval of all or some of the Owners, or for any other reasonable purpose. Special meetings shall be called by a majority of the Board, or at least by one-third (1/3) of the Owners by written notice, delivered to all owners not less than fifteen (15) days prior to the date fixed for said meeting. The notice shall contain matters to be considered.

5.04. Parliamentary Rules. Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with this Declaration or other such rules adopted by the Board.

5.05. Officers. The officers of the Association shall be a President, Vice-President, Secretary-Treasurer. Each officer shall be required to be a member-in-good-standing, and the President must be a member of the Board. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Association and may be removed or replaced by same. The Board may, in its discretion, require that officers be subject to fidelity bond coverage.

A. President. The President shall preside at all meetings of the Association and of the Board and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees. The President shall be authorized to provide payment for Association expenses not to exceed \$400.00.

B. Vice-President. In the absence or inability of the President. The Vice-President shall perform the functions of the President.

C. Secretary-Treasurer. The Secretary shall keep the minutes of all proceedings of the Board and the Association and shall keep such books and records as may be necessary for the records of the Association and the Board, including the minute book wherein the resolutions shall be recorded. As Treasurer he shall be responsible for the fiscal affairs of the Board and the Association.

ARTICLE VI

LIABILITY AND INDEMNIFICATION

6.01. Liability of members of the Board and Officers. The members of the Board, officers and any agents or future employees of the Association:

(1) shall not be liable to the Owners of the Association as a result of their activities as such for any mistake of judgment, or otherwise; except for their own willful misconduct, bad faith, or failure to exercise that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions;

(2) shall have no personal liability to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Owners in their capacity as such;

(3) shall have no personal liability in tort to an Owner or any other person or entity direct or imputed by virtue of acts performed by them as Board members and/or Officers except for their own willful misconduct, bad faith, or failure to exercise that degree of diligence care and skill which ordinarily prudent men would exercise under similar circumstances in like positions; and

(4) shall have no personal liability arising out of the use, misuse or condition of the Common Properties or which might in any other way be assessed against or imputed to them as a result of or by virtue of their capacity as such Board members or Officers.

6.02. Indemnification by Association. To the extent now or hereafter permitted by applicable law, the Association shall indemnify and hold harmless any person, his heirs and personal representatives, from and against any and all personal liability, and all expenses, including without limitation counsel fees and court costs, incurred or imposed, or arising out of or in settlement of any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more Owners or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the Board or Officer of the Association; provided, in the case of any settlement, that the Board shall have approved the settlement, which approval is not to be unreasonably withheld. Such indemnification by the Association herein set forth shall be paid by the Board on behalf of the Association and shall constitute a Common expense.

6.03. Costs of Suit in Actions Brought by one or more Owners on Behalf of all Owners. No suit shall be brought by one or more but less than all owners on behalf of all owners without approval of a majority of all Owners. Such costs, if approved by majority of all Owners would constitute Common expense unless such suit is brought by one or more owners against other Owners, the Association or the Board, in which event the plaintiff's expenses, including counsel's fees and court costs, shall not be charged as common expense.

6.04. Notice of Suit and Opportunity to Defend. Suits brought against the Association, or the Board, or Officers, in their respective capacities as such, or the Property as a whole, shall be directed to the President of the Association, who shall promptly give written notice to the members of the Board and any Mortgagees, and shall be defended by the Board, and the Association and all Owners shall have no right to participate other than through the Board in such defense. Suits against one or more Owners shall be directed to such Owners, who shall promptly give written notice thereof to the Board and to Mortgagees of the Lots affected, and shall be defended by such owners at their expense.

ARTICLE VII

PURPOSE, USES AND RESTRICTIONS

7.01. Common Properties. The common properties shall not be used except for one or more of the following purposes:

A. Recreational facilities, the primary purpose of which is to serve the residents and members of the Charleston Traces Townhomes Owners Association.

B. For the installation and maintenance of drainage systems, water lines, sewer lines, gas lines, telephone lines, power lines, cable TV lines, and all other utility and/or service lines.

C. Ingress and Egress

D. Construction and maintenance of Security fences, gates, alarms, etc.

The Common Properties shall remain permanently as open space and there will be no development of same. No building, structure or facility shall be placed, installed, erected, or constructed in or on said Common Properties, unless it is purely incidental to one or more of the uses above specified. Notwithstanding any other provision of this Declaration, no amendment shall be made which impairs or diminishes the rights of the members of the Association in the Common Properties.

7.02. Dwelling Unit. A dwelling unit shall be occupied and used only as a single-family private residence.

7.03 Restrictions.

1. No dwelling shall be used except as a single family dwelling.

2. No fence or wall of any type shall be placed, constructed or allowed upon any Lot without the expressed, written consent of Developer. Such written consent shall be recorded in the Register's Office of Hamilton County, Tennessee.

3. No noxious and obnoxious or offensive activity shall be carried on upon or within any unit, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the owners of said lot or the neighborhood in general.

4. No sign shall be displayed on any lot other than one of not more than four (4) square feet advertising the property for sale or for rent.
5. If any unit shall be used for rental purposes, the unit owner or his agent shall insure that no objectional or offensive activity is permitted that might disturb any other unit.
6. No animals, livestock or poultry shall be raised or kept on any lot, except that one (1) dog or cat as a household pet and providing that they are not kept for commercial purposes.
7. Each owner shall keep his premises clean and orderly. No materials or equipment such as disabled autos or other unsightly objects shall be kept.
8. Access, drainage and utility easements are as shown on plat recorded in Plat Book 54, Page 116, in the Register's Office of Hamilton County, Tennessee.
9. No unit shall be altered on the outside including color of paint and roof unless written consent shall be given by all the owners.
10. Each wall which is built as a part of the original construction of the units upon the properties and placed on the dividing line between the lots shall constitute a party wall and the general rules of law regarding party wall and liability for property damage from negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who made use of the wall in equal proportions to such use.
11. Each owner shall perform promptly all maintenance and repair work within his unit which, if permitted, would affect the property in its entirety or in a part belonging to other owner(s) and each owner is expressly responsible for damages and liability which result from his failure to promptly perform such maintenance and repair work. Unless otherwise provided in other articles of this declaration, each owner shall be responsible for the costs of performing all such maintenance and repair work. Maintenance and repairs needed outside the living areas, including painting, roofing, grounds, parking areas, fences, and all other outside repairs and maintenance needs, whether by normal usage, weather related, preventive or incidental repairs needed shall be done by the Association.

BOOK # 105 PAGE 032

12. If a partywall is destroyed or damaged by fire or other casualty, any owner who uses the wall may restore it. If other owners make use of this wall, they shall contribute to the restoration cost in proportion to such use, without prejudice, however, to the right of any such owner to call for a larger contribution from the owner under any rule of law regarding liability for negligent or willful acts or omissions.

13. Notwithstanding any other provision herein, an owner, who, by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary repairs as needed.

14. In the event of any disputes arising concerning a party wall, or under the provisions of this Declaration, the Association shall govern.

15. Each owner shall obtain fire and extended coverage insurance on his unit in an amount which shall be equal to the maximum insurable replacement value as determined annually and shall annually provide a certificate evidencing the existence of insurance to the Secretary of the Association. Each owner shall purchase public liability insurance in an amount not less than \$300,000.00 to protect himself against claims due to accidents within his unit and on the outside ground or common ground of his unit, and annually provide a certificate evidencing same to the Secretary of the Association.

16. Each owner shall pay his property tax as billed. If any taxing authority shall levy any tax against any common area, then each owner shall pay an equal share of said tax.

17. Annual Termite Protection Contracts are to be kept in force by each owner with a Pest Control Co. of their choice, and annually provide a certificate evidencing same to the Secretary of the Association. This is to insure that no termite damage will occur between Town house units.

18. Owners shall promptly remove any deposits or wastes made by their pets upon the Common Properties or the properties of other Townhome Owners.

7.04 Motor Homes and Towed Vehicles. No motor type of home shall be placed or permitted to remain on any lot unless permission is obtained from the Board of Directors. No boat trailers, campers or other towed vehicle shall be stored on Common Properties.

7.05. Violations and Enforcement. In the event of violations of any one or more of the provisions of this Article or this Declaration, the Association, its successors or assigns, including all parties hereafter becoming owners of any one of more of the Lots to which the provisions of this Declaration apply, may bring action or actions against the Owner seeking to enjoin such violation, or attempted violation, and the Owner shall be further liable for such damages as may accrue, including any court costs and reasonable attorney's fees incident to any such proceeding, which costs and fees shall constitute liquidated damages. By reason of the rights of enforcement of the provisions of this Article being given unto Owners of Lots (subject to rights of variance reserved by the Board), it shall not be incumbent upon the Association to enforce the provisions of this Article or to prosecute any violation thereof. In the event of a violation of these restrictions, a waiver thereof may be made by the Board in its sole discretion, if said waiver does not adversely affect the purposes contained herein.

ARTICLE VIII

ASSESSMENTS

8.01. Creation of Lien and Personal Obligation of Assessments. Each Owner by acceptance of a Deed conveying a Lot, whether it be expressed in any such deed or other conveyance, by submission of such lots to this Declaration under the provisions of 2.01 Section hereof, shall be deemed to covenant and agree to all of the terms and provisions of these covenants and pay to the Association annual assessments and special assessments for the purposes set forth in Section 8.04 of this Article, such time as hereinafter provided. The Owner of the lot shall be personally liable to the Association for the payments of all assessments, whether annual or special, which may be levied while such party is Owner of a lot. The assessments, together with interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the Lot and all of the improvements thereon against which each such assessment is made. Unpaid assessments shall bear such interest from due date to date of payment at a rate set by the Board.

8.02. Purpose of Assessments. The assessments levied by the Board shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Properties. Special assessments shall be used as set forth in Section 8.04 of this Article.

8.03. Amount of Monthly Assessments. The Monthly assessment per unit shall be Thirty-five (\$35.00) Dollars payable monthly unless a majority of the Board should elect to increase or reduce said amount at an annual or special meeting approved by two-thirds of the members in attendance.

8.04. Special Assessments for Improvements and Additions. The Board may levy special assessments for the purpose of defraying, in whole or in part, the cost (more than \$3,000.00) of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including necessary fixtures and personal property related thereto or addition to the Common Properties, provided that any such assessment shall have the approval of two-thirds (2/3) of the Owners at a duly called meeting of the Association, written notice shall be sent to members thirty (30) days in advance setting forth the purpose of said meeting.

8.05. Date of Commencement of Monthly Assessments. The Monthly assessment shall commence on the date fixed by the Board to be the date of commencement. Such monthly assessment will be due and payable on the same date each month. The due date shall be fixed in the resolution authorizing such assessment.

8.06. Lien. Recognizing that the necessity for providing proper operation and management of the Properties entails the continuing payment of costs and expenses therefor, the Association is hereby granted a lien upon each lot and the improvements thereon as security for payment of all assessments against said Lot, now or hereafter assessed, which lien shall also secure all costs and expenses, and reasonable attorney's fees, which may be incurred by the Association in enforcing the lien upon said Lot. The lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Tennessee. Failure by the Owner to pay any assessment, annual or special, on or before the due dates set by the Association for such payment shall constitute a default, and this lien may be foreclosed by the Association.

8.07. Lease, Sale or Mortgage of Lot. Whenever any lot may be leased, sold or mortgaged by the Owner thereof, which lease, sale or mortgage shall be concluded only upon compliance with other provisions of this Declaration, the Association, upon written request or the Owner of such Lot, shall furnish to the proposed lessee, purchaser, or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the Owner of such Lot; such statement shall include whether there exists any matter in dispute between the Owners of such Lot and the Association under this Declaration. Such statement shall be executed by an officer of the Association, and any lessee, purchaser, or mortgagee may rely upon such statement in concluding the proposed lease, purchase, or mortgage transaction, and the Association shall be bound by such statement.

Should payment of any assessment be in default when such lease, sale, or mortgage should be enacted, then the rent, proceeds of purchase or mortgage shall be applied by the lessee, purchaser, or mortgagee first to payment of any delinquent assessment to the Association before payment of any rent, proceeds of purchase or mortgage to the Owner of any Lot who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor and the Lot made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

ARTICLE IX**MORTGAGES, MORTGAGEES AND PROCEDURES AND
RIGHTS RELATING THERETO**

9.01. Register of Owners and Mortgages. The Association shall at all times maintain a register setting forth the names of the Owners, and, in the event of a sale or transfer of any Lot to a third party, the purchaser or transferee shall notify the Association Board in writing of his interest in such Lot, together with such recording information that shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Lot. Further, the Owner shall at all times notify the Association of any Mortgage and the name of the Mortgagee on any Lot, and the recording information which shall be pertinent to identify the Mortgage and Mortgagee. The Mortgagee may, if it so desires, notify the Association of the existence of any Mortgage held by it, and upon receipt of such notice, the Association shall register in its records all pertinent information pertaining to the same.

9.02. Subordination of Lien to First Mortgages. The liens provided for in this Declaration shall be subordinate to the lien of a First Mortgage on any Lot if, and only if, all assessments, whether annual or special, with respect to such Lot having a due date on or prior to the date such Mortgage is recorded have been paid. In the event a First Mortgage shall acquire title to any Lot by virtue of any foreclosure, deed in lieu of foreclosure, or judicial sale, such Mortgagee acquiring title shall only be liable and obligated for assessments, whether annual or special, as shall accrue and become due and payable for said Lot subsequent to date of acquisition of such title. In the event of the acquisition of title to a Lot by foreclosure, deed in lieu of foreclosure, or judicial sale, any assessments, whether annual or special, as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners as a part of the Common Expense; provided, however, nothing contained herein shall be construed as releasing the party or parties liable for such delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

9.03 Amendments. No Amendment to this Article IX shall adversely affect the rights of any First Mortgage whose Mortgage was recorded prior to the Amendment unless such Mortgagee consents to such Amendment.

9.04. Extension of Benefits to Other Mortgagees. By subordination agreement executed by a majority of the Board, the benefits of Sections 9.02 and 9.03 of this Article may be extended to Mortgagees not otherwise entitle thereto.

9.05. Mortgagees Approval of Certain Actions. Unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each First Mortgage owned) of the Lots have given their prior written approval, the Association shall not be entitle to:

A. By act or omission seek to abandon, partition, sub-divided, encumber, sell, or transfer the Common Properties owned, directly or indirectly, by the Association;

B. Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;

C. By act or omission change, waive or abandon the plan of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of the units, the maintenance of the Common Properties or the upkeep thereof; or

D. Use hazard insurance proceeds for losses to any Common Properties for other than the repair, replacement or reconstruction of such Common Properties.

E. Property Taxes, if any, for the Common Properties shall be paid by each individual owner upon receipt of a Tax Notice from the Hamilton County Court Clerk.

F. The Association duly represented by the Board will maintain liability insurance on the common areas, if required. A two-thirds majority vote of members at an annual meeting or special meeting shall be required to reduce such amount or cancel coverage. Liability insurance is required to be maintained by the Association in the event such insurance is unavailable to the individual owners of the units.

9.06. Notice of Default to First Mortgagees. If requested by a First Mortgagee, the Association shall notify each First Mortgagee of any default by the Mortgagor of a Lot in the performance of said Mortgagor's obligations under this Declaration which is not cured within sixty (60) days.

9.07. Examination of Books. Each Owner and each Mortgagee of a Lot shall be permitted to examine the books and records of the Board and Association during regular business hours.

9.08. Condemnation. Should the Properties be condemned, the proceeds shall first be applied to lender's balances.

ARTICLE X

REMEDIES ON DEFAULT

10.01. Scope. Each Owner shall comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations of the Association as they presently exist or as they may be amended from time to time, and each Owner shall be reasonable for the actions of his or her family members, servants, guests, occupants, invitees or agents.

10.02. Grounds For and Form of Relief. Failure to comply with any of the Covenants of this Declaration, the By-Laws, or the Rules and Regulations promulgated by the Board which may be adopted pursuant thereto shall constitute a default and shall entitle the Association to seek relief which may include, without limitation, an action to recover any unpaid assessment, annual, or special, together with interest as provided for in Section 8.01, any sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or, if appropriate and not in conflict with the provisions of this Declaration and By-Laws, by an aggrieved Owner.

10.03 Recovery of Expenses. In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall, in addition to the relief provided for in Section 10.02, be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be allowed by the court, but in no event shall the Owner be entitled to such attorneys' fees.

10.04. Waiver. The failure of the Association or of any Owner to enforce any right, provision, covenant or condition which may be granted herein or the receipt or acceptance by the Association of any part payment of an assessment shall not constitute a waiver of any breach of a Covenant, nor shall same constitute a waiver to enforce such Covenant(s) in the future.

10.05. Election of Remedies. All rights, remedies and privileges granted to the Association or an Owner or Owners pursuant to any term, provision, covenant or condition of this Declaration and By-Laws shall be deemed to be cumulative and in addition to any and every other remedy given herein or otherwise existing, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to any such party at law or in equity.

10.07. Questions of Fact; Arbitration. If there shall be any dispute as to any material fact, either the Committee or the complainant may, at their option, within ten (10) days after notice of the decision as provided for in Section 10.05, submit the same to arbitration in accordance with the provisions for arbitration adopted by the American Arbitration Association by filing with the other party a notice of its intention to do so. The decision of the arbitrator shall be final and binding upon the complainant and the Committee. In the event of arbitration, each party shall bear one-half of the expense thereof.

10.08. Exclusive Remedy. The remedy for Owner complaints provided herein shall be exclusive of any other remedy, and no Owner shall bring suit against the Committee, the Association, the Board of Directors or any member of same in his capacity as such member without first complying with the procedures for complaints herein established.

10.09. Expenses. All expenses incurred by complaint, including, without limitation, attorney's fees and arbitration expenses and the like shall be the sole responsibility of complainant. All expenses of the Committee incident to such complaint shall be deemed a Common Expense of the Association.

ARTICLE XI

GENERAL PROVISIONS

11.01. Duration. The Covenants of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Board, the Association, the Developers, or Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

11.02. Amendments. This Declaration may be amended in accordance with the following procedure:

A. An amendment to this Declaration may be considered at any annual or special meeting of the Association; provided however, that if an annual meeting, notice of consideration of the amendment and a general description of the terms of such amendment shall be included in the notice of the annual meeting provided for in Section 5.02, and, if a special meeting, similar notice shall be included in the notice of the special meeting provided for in Section 5.03. Notice of any meeting to consider an amendment shall also be sent to each Mortgagee listed upon the register of the Association.

B. At any such meeting, the amendment must be approved by an affirmative two-thirds (2/3) vote of those Owners present and voting.

C. If an amendment is approved as set forth in Paragraph B of this Section, the Secretary shall mail a true copy of the amendment to each Owner, informing each Owner that he shall have twenty (20) days from such notice within which to reply, in writing, to the Secretary and to indicate his approval or disapproval of such amendment. If seventy-five (75%) percent of those Owners responding within said twenty (20) day period shall indicate their approval of the amendment, it shall be deemed adopted.

D. An amendment adopted under paragraph C of this Section shall become effective upon its recording in the Register's Office of Hamilton County, Tennessee, and the President and Secretary shall execute, acknowledge and record amendment and the Secretary shall certify on its face that it has been adopted in accordance with the provisions of this Section; provided that in the event of the disability or other incapacity of either, the Vice President shall be empowered to execute, acknowledge and record the amendment. The certificate shall be conclusive evidence to any person who relies thereon in good faith, including, without limitation, any Mortgagee, prospective purchaser, tenant, lien or title insurance company that the amendment was adopted in accordance with the provisions of this Section.

E. The certificate referred to in paragraph D of this Section shall be in substantially the following form:

C E R T I F I C A T E

I, _____, do hereby certify that I am the Secretary of Charleston Trace Townhomes Owners Association and that the within amendment to the Declaration of Covenants and Restrictions and By-Laws for Charleston Trace Townhomes Owners Association was duly adopted by the Owners of said Association in accordance with the provisions of Section 12.02 of said Declaration.

Witness my hand this _____ day of _____, _____.

No amendment shall be made affecting the Common Properties which is in any manner inconsistent with the permitted uses and purposes for such properties set out in section 7.01. No amendment to this Declaration shall be made without the prior approval of the Hamilton County Planning Commission. No amendment to this Declaration shall be made which shall adversely effect the rights of Mortgagees under Section 9.03.

12.03. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the Owner of the records of the Association at the time of such mailing. Notice to one of two or more co-owners of a Lot shall constitute notice to all co-owners. It shall be the obligation of every Owner to immediately notify the Secretary in writing of any change of address. Any notice required to be sent to the Board, the Association or any officer thereof, or the Developers under the provisions of this Declaration shall likewise be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to such entity or person at the following address:

The address for the Board, the Association, or any officer thereof may be changed by the Secretary or President of the Association by executing, acknowledging, and recording an amendment to this Declaration stating the new address or addresses. Likewise, any developer may change his or its address by executing, acknowledging, and recording an amendment to this Declaration stating his or its new address.

11.04. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

11.05. Captions. The captions herein are inserted only as a matter of convenience and for reference and are in no way intended to define, limit or describe the scope of this Declaration nor any provision hereof.

11.06. Use of Terms. Any use herein of the masculine shall include the feminine, and the singular the plural, when such meaning is appropriate.

11.07. Interpretation. The provisions of this declaration shall be liberally construed to effectuate their purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

11.08. Law Governing. This Declaration is made in the State of Tennessee, and any question pertaining to its validity, enforceability, construction or administration shall be determined in accordance with the laws of that State.

11.09. Effective Date. This Declaration shall become effective upon its recording.

IN WITNESS WHEREOF, the Developers have executed, or caused to have executed by its duly authorized officers this Declaration on the date first above written.

GLASSCOCK DEVELOPMENTS, INC.,
a Tennessee corporation

BY: *Bryan K. Glasscock*

BY: *V. President*

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, Kiwana Morrow, of the
state and county aforesaid, personally appeared
Barry K. Glasscock with whom I am
personally acquainted (or proved to me on the basis of
satisfactory evidence), and who upon oath, acknowledged himself
to be president (or other officer) authorized to execute the
instrument of the Glasscock Developments, Inc., the within named
bargainor, a corporation, and that he as such
Vice President executed the foregoing instrument for the
purpose therein contained, by signing the name of the corporation
by himself as Vice President.

WITNESS my hand and seal, at office in Chattanooga,
Tennessee, this 25th day of June, 1996.

Kiwana Morrow
Notary Public

My Commission Expires:

KIWANA MORROW
NOTARY PUBLIC
TENNESSEE STATE AT LARGE
MY COMMISSION EXPIRES 07-10-1999

335331

PAMELA HURST
REGISTER
HAMILTON COUNTY
STATE OF TENNESSEE

'96 JUN 25 PM 3 59

BY: *[Signature]*
DEPUTY
RECPT. # 851734