

**BY-LAWS
FOR
ROSE GARDEN HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I
NAME**

The following provisions shall constitute the By-Laws of ROSE GARDEN HOMEOWNERS' ASSOCIATION, INC. (the "By-Laws"), a nonprofit corporation (the "Association") which shall, along with the provisions of the Charter of the Association (the "Charter"); the Declaration of Covenants and Restrictions for Rose Garden Subdivision as amended by First Amendment to Declaration of Covenants and Restrictions, as may be further amended from time to time (the "Declaration") and the rules and regulations adopted by the Board of Directors of the Association (the "Board"), govern the administration of Rose Garden Subdivision, a residential development (the "Development") and the real property in the Development owned by the Association ("Common Properties"). The terms in these By-Laws (unless otherwise defined) shall have the same meaning as the terms defined in the Declaration for this Development.

**ARTICLE II
OFFICES**

The principal office of the Association shall be located at:

1720 E. Boy Scout Road
Hixson, Tennessee 37343

or at such other place either within or without the State of Tennessee, as shall be lawfully designated by the Association, or as the affairs of the Association may require from time to time.

**ARTICLE III
PURPOSES**

The purposes of this Association shall be to provide for the establishment of a residents' association for the government of the Development in the manner provided by the Charter, the Declaration and these By-Laws. The aims of this Association are to be carried out through any and all lawful activities, including others not specifically stated in the Charter, the Declaration, or these By-Laws but incidental to the stated aims and purposes; provided that any such activity or contribution shall conform to any applicable restrictions or limitations set forth in the Charter or which are imposed on real estate homeowners' associations by the Internal Revenue Code of 1986 and the regulations thereunder, as presently enacted or as they may hereafter be amended or supplemented. All present or future owners or tenants, or their employees, or any other person who might use the facilities in the Development in any manner, shall be subject to the covenants, provisions or regulations contained in the Declaration and these By-Laws, as amended, and shall be subject to any restriction, condition or regulation hereafter adopted by the Association.

ARTICLE IV ASSOCIATION

4.01 Membership. The Developer and every person or entity who is a record Member of a fee simple interest or an undivided fee simple interest in any Lot which is subject to the 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 be automatically transferred to the new Member upon the conveyance of any Lot and recording of the deed of conveyance in the Register's Office of Hamilton County, Tennessee. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

4.02 Voting Rights.

(a) Except as hereinafter provided in Section 4.02(b), Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 4.01. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot. When one or more co-owners signs a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of the other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in a written instrument delivered to the Secretary of the Association before the vote is counted. If co-owners disagree as to the vote, each co-owner will be entitled to a fractional vote equal to his fraction of ownership.

(b) The Developer shall be entitled to three (3) votes for each Lot owned by the Developer.

ARTICLE V THE BOARD OF DIRECTORS

5.01 Board of Directors. Subject to Section 5.02 of this Article hereinbelow, the administration of the Development and Common Properties on behalf of the Association shall be conducted by a Board of Directors ("Board") which shall consist of five natural persons of legal age, each of whom, at all times during membership on the Board, shall be a Member, a member of the household of a Member, or the nominee of an entity, other than a natural person, which is a Member.

5.02 Developer Performs Functions.

(a) The rights, duties and functions of the Board shall be solely exercised by Developer until such time as the Developer has sold twenty (20) Lots. The Developer may, in its sole discretion, designate up to five (5) individuals to serve on the Board on behalf of the Developer during the period that the Developer is performing the functions of the Board. Such individuals designated by the Developer need not be Members, and may be removed and replaced by the Developer at will. The Developer may also limit the scope of authority of such individuals. At such time as the Developer has sold twenty (20) Lots, the Members other than the Developer shall be entitled to elect two (2) of the members of the Board. At such time as the Developer shall have

sold twenty-five (25) Lots, the Developer shall call a special meeting of Members to elect Directors to succeed to the positions held by individuals designated by the Developer.

(b) Prior to calling the meeting of the Association to elect a Board to succeed the individuals designated by the Developer, the Developer may execute and record in the Register's Office of Hamilton County, Tennessee a document stating that the Developer reserves unto itself, its successors, or assigns, the rights given to the Board in Article IV of the Declaration (Architectural Control), and stating that said reservation, notice of which is thus provided, shall survive the election of a Board to Succeed the Developer. Thereafter, the Developer may continue to exercise the rights thus reserved to it until such time as it has sold all of the Lots in the Development or at such time as the Developer determines to relinquish the rights it has reserved to itself, the Developer shall execute and record in the Register's Office of Hamilton County, Tennessee a document assigning those rights to the Board.

5.03 Election. At each annual meeting, subject to the provisions of Section 5.02 hereof, the Association shall elect those members of the Board as required under Section 5.01 who shall serve the terms set out in Section 5.04; provided, however, the members of the Board elected to succeed the Developer shall be elected at a special meeting duly and specifically called for that purpose by the Developer. The Board elected at that special meeting shall serve until the next annual meeting of the Association held thereafter. At least thirty (30) days prior to any annual meeting of the Association a Nominating Committee of not less than two (2) Members (none of whom shall be members of the Board) which shall recommend to the annual meeting one nominee for each position on the Board to be filled at that particular annual meeting. Nomination for a position on the Board may also be made by petition filed with the Secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by five (5) or more Members and by the nominee named therein indicating his willingness to serve as a member of the Board, if elected.

5.04 Term. Members of the Board shall serve for a term of two (2) years; provided, however, that three (3) members of the first Board elected by the Association at the annual meeting thereof shall be elected and shall serve for a term of one (1) year and the other two (2) members shall be elected and serve for a term of two (2) years. Thereafter, all Board members elected each year shall serve for a term of two (2) years. The members of the Board shall serve until their respective successors are duly elected and qualified, or until their death, resignation or removal.

5.05 Resignation and Removal. Any member of the Board may resign at any time by giving written notice to the President or the remaining Board members. Any member of the Board may be removed from membership on the Board by the approval of sixty-seven percent (67%) of the votes of those Members of the Association who are in attendance or represented at any annual or special meeting duly called for such purpose, except that a vacancy on the Board shall be deemed to exist in the event of the death of a Board member, the disability of a Board member which, in the opinion of a majority of the members of the Board, renders such Board member incapable of performing Board duties, or in the event a Board member shall cease to be a Member. Whenever there shall occur a vacancy on the Board for any reason, the remaining Board members shall elect a successor member to serve until the next annual meeting of the Association or until a special meeting is called for filling vacancies, at which time said vacancy shall be filled by the Association for the unexpired term, if any.

5.06 Compensation. The members of the Board shall receive no compensation for their services unless expressly authorized for by the Members of the Association, but they shall be reimbursed for reasonable expenses incurred by them in the performance of their duties.

5.07 Powers and Authority of the Board. The Board, for the benefit of the Members of the Association, shall enforce the provisions of the Declaration, these By-Laws, and the Rules and Regulations governing the Common Properties. Subject to any provision herein, the Board 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, garbage collection, electrical, telephone and gas and other necessary utility services for the Property.

B. The services of a person or firm to manage its affairs (herein called "Manager"), to the extent deemed advisable by the Board, as well as such other personnel as the Board shall determine shall be necessary or proper for the operation of the Common Properties, whether such personnel are employed directly by the Board or are furnished by the Manager. All persons employed to manage or assist in the management or maintenance of the Common Properties shall be employed at the will of the Board; provided that a manager may be employed for successive periods not exceeding a three (3) year term in each period. The Board may delegate any of its duties, powers or functions relating to the daily administrative affairs of the Association to any person or firm designated by the Board to act as Manager.

C. The services of a person or firm to provide security for the Development to the extent and in such manner (fixed or roving or a combination thereof) as allowed by law and as determined by the Board to be necessary or proper.

D. Legal and accounting services necessary or advisable in the operation of the Common Properties and the enforcement of this Declaration, these By-Laws, and any Rules and Regulations made pursuant thereto.

E. Officers and Directors Liability Insurance covering the Officers and Directors of the Association acting in such capacity.

F. A fidelity bond naming the Manager, and such other persons as may be designated by the Board as principals and the Board, Association and Members as obligees, in an amount to be determined from time to time by the Board.

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

H. 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 the 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 Common Properties or for the enforcement of the Declaration, these By-Laws, or the Rules and Regulations.

The Board shall have the exclusive right to contract for all goods, services, including security personnel, and insurance, payment for which is to be made a Common Expense. The provision shall not be construed to prohibit the Board from delegating such authority to the Manger as it deems proper.

5.08 Additional Powers of the Board. The Board shall have the right to acquire, operate, lease, manage, mortgage and otherwise trade and deal with the Property as may be necessary or convenient in the operation and management of the Property, and in accomplishing the purposes set forth herein. The Board or any managing agent or entity designated by the Board shall be deemed the agents of the Members and as such shall manage, maintain and improve the Property and also collect, conserve, allocate and expend money received from the Members in a manner consistent with such agent's relationship and in conformity with this Declaration, these By-Laws and the Rules and Regulations.

5.09 Meeting of the Board. Meetings of the Board shall be held at such places within or without the State of Tennessee as the Board shall determine. Three (3) members of the Board shay 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 of the Association and the minutes shall be recorded by the Secretary of the Association, whether said Secretary is a member of the Board or not. The Board shall annually elect all of the officers set forth in Section 6.05 hereof. The meeting for the election of officers shall be held at a meeting of the Board to be held immediately following the annual meeting of the Association. 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 all members of the Board.

5.10 Special Meetings. Special meetings of the Board may be called by the President of the Association or by any two (2) Board members.

5.11 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 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.

5.12 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 by a 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.

5.13 Notice of Election. After the election of the Board to succeed the first Board, the Secretary of the Association shall execute and, where desirable, acknowledge and record a certificate stating the names of all of the members of the then Board, provided, that, in the event of the disability or other incapacity of the Secretary, the President of the Association shall be

empowered to execute the aforesaid certificate. The certificate shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

5.14 Fiscal Year. The fiscal year of the Association shall be the calendar year unless and until otherwise determined by the Board.

5.15 Special Committees. The Board, by resolution duly adopted, may designate one or more special committees, including without limitation an Architectural Review Committee, each committee to consist of two (2) or more Members appointed by the Board, which, to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. The Board may also rescind any such resolution by a further resolution duly adopted. The Developer shall perform the functions of all Special Committees until such time as provided in Section 5.02 hereof. Such Special Committee or Committees shall have such name or names as may be determined from time to time by the Board. Such Special Committees shall keep regular minutes of their proceedings and report the same to the Board when required. The Board may appoint Members to fill vacancies on Special Committees.

5.16 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 the Property and setting forth restrictions on, and requirements respecting the use and maintenance of the Property. Copies of the Rules and Regulations shall be furnished to each Member prior to the time the same shall become effective.

5.17 Limitation on Capital Additions, Etc. The Board shall authorize no structural alterations, capital additions to, or capital improvements of the Property, any of which require an expenditure in excess of Five Thousand Dollars (\$5,000.00) without approval of a majority of the votes of those Members who are present or represented at any annual or special meeting of the Association duly called for such purpose; or in excess of Ten Thousand Dollars (\$10,000.00) without approval of sixty-seven percent (67%) of the votes of those Members who are present or represented at any annual or special meeting of the Association duly called for such purpose; provided, however, that the Board shall have the power to make any such structural alterations, capital additions to, or capital improvements of, the Property as are necessary, in the Board's reasonable judgement, 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.

5.18 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 the Declaration or 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 VI
THE ASSOCIATION; MEETINGS, OFFICER, ETC.

6.01 **Quorum.** The presence in person or by proxy at any meeting of the Association of either fifty percent (50%) of the Members or Members (including the Developer) entitled to cast at least five (5) votes, in response to notice to all Members properly given in accordance with Sections 6.02 or 6.03 of these By-Laws, as the case may be, shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Association upon the affirmative vote of Members entitled to cast a majority of the votes which are represented at such meeting.

6.02 **Annual Meeting.** There shall be an annual meeting of the Association on the first Monday of February at 6:00 P.M. at such reasonable place or other time (but not more than sixty (60) days before or after such date) as may be designated by written notice of the Board delivered to the Members not less than fifteen (15) days prior to the date fixed for said meeting. At or prior to the annual meeting, the Board shall furnish to the Members; (1) a budget for the coming fiscal year that shall itemize the estimated Common Expenses of the coming fiscal year that shall itemize the estimated allocation thereof to each Member; and (2) a statement of the Common Expenses itemizing receipts and disbursements for the previous and, if then available, for the current fiscal year, together with the allocation thereof to each Member. Within ten (10) days after the annual meeting, the budget statement shall be delivered to the Members who were not present at the annual meeting if not previously provided. The Developer, or its successors or assigns, shall have the right to approve or disapprove the budget for the coming year for a period of ten (10) years after the date on which the first Board is elected to succeed the Developer pursuant to Section 5.02 hereof.

6.03 **Special Meeting.** Special meetings of the Association may be held at any time and at any reasonable place to consider matters which, by the terms hereof, require the approval of all or some of the Members, or for any other reasonable purpose. Special meetings may be called by a majority of the Board, or by at least ten percent (10%) of the Members by written notice, delivered to all Members not less than thirty (30) days prior to the date fixed for said meeting. The notice shall specify the date, time and place of the meeting, and the matters to be considered.

6.04 **Parliamentary Rules.** Robert's Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with these By-Laws or other such rules adopted by the Board.

6.05 **Officers.** The officers of the Association shall be a Chairman of the Board, President, Vice-President, Secretary, and Treasurer. The Developer may, in its sole discretion, designate individuals to fill these positions during the period that the Developer is performing the functions of the Board pursuant to Section 5.02 hereof. Such officers designated by the Developer need not be Members, and may be removed and replaced by the Developer at will. The Developer shall determine the scope of the authority of each such designated officer.

Once the Developer has turned over authority to a successor Board pursuant to Section 5.03 hereof, the following provisions shall become applicable: Each officer shall be required to be a Member, 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 Board and may be

removed and replaced by the Board. In the event an office becomes vacant due to an officer ceasing to be a Member, or due to the death or disability of an officer, or for any other reason, the Board shall immediately name a successor to that office to serve out the remainder of the term. The Board may, in its discretion, require that officers be subject to fidelity bond coverage.

A. Chairman of the Board. The Chairman of the Board shall be the chief executive officer of the Association and he 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. He shall have the authority and power to execute on behalf of the Association contracts, notes, bonds, mortgages, deeds of trust, security deeds, leases, waivers of liens and other documents and instruments arising in the ordinary course of business.

B. President. The President shall be the chief operating officer of the Association and in the absence of the Chairman of the Board, he 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. He shall have the authority and power to execute on behalf of the Association contracts, notes, bonds, mortgages, deeds of trust, security deeds, leases, waivers of liens and other documents and instruments arising in the ordinary course of business.

C. Vice-President. In the absence or inability of the President, the Vice-President shall perform the functions of the President.

D. Secretary. The Secretary shall keep the minutes of all proceedings of the Board and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Association and the Board, including the minute book wherein the resolutions shall be recorded.

E. Treasurer. The Treasurer shall be responsible for the fiscal affairs of the Board and the Association, but may delegate the daily handling of funds to the Manager and accounting to accountants selected by the Board.

ARTICLE VII LIABILITY AND INDEMNIFICATION

7.01 Liability of Members of the Board and Officers. The members of the Board, the officers and any agents and employees of the Association shall: (i) not be liable to the Members or Association as a result of their activities as such for any mistake of judgment, or otherwise, except for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (ii) have no personal liability to a Member or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Members in their capacity as such; (iii) have no personal liability in tort to a Member or any other person or entity direct or imputed by virtue of acts performed by them as Board members and/or officers except for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; and (iv) have no personal liability arising out of the use, misuse or condition of the Property, or which might in any other way be assessed against or imputed to them as a result or by virtue of their capacity as such Board members and/or officers.

7.02 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, suite or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more Members 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 an officer or agent or employee 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 right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or by vote of the Association of the Board, or otherwise. The indemnification by the Association set forth in this Article VII shall be paid by the Board on behalf of the Association and shall constitute a Common Expense.

7.03 Costs of Suite in Actions Brought by One or More Members on Behalf of All Members. No suite shall be brought by one or more but less than all Members on behalf of all Members without approval of a majority of Members and, if approval is obtained, the plaintiffs' expenses, including reasonable counsel's fees and court costs, shall be a Common Expense unless such suit is brought by one or more Members against other Members, the Association or against the Board, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all Members as defendants, in which event the plaintiffs' expenses, including counsel's fees and court costs, shall not be charged as a Common Expense.

7.04 Notice of Suite and Opportunity to Defend. Suits brought against the Association, or the Board, or the officers, employees or agents thereof, in their respective capacities as such, or the Common Properties as a whole, shall be directed to the President of the Association, who shall promptly give written notice thereof to the other members of the Board and any Mortgages, and shall be defended by the Board, and the Association and all Members shall have no right to participate other than through the Board in such defense. Suits against one or more, but less than all Members shall be directed to such Members, who shall promptly give written notice thereof to the Board and to the Mortgages of the Lots affected, and shall be defended by such Members at their expense.

ARTICLE VIII GENERAL PROVISIONS

8.01 Businesses. Nothing contained in these By-Laws shall be construed to give the Board the authority to conduct any business for profit on behalf of the Association or any Member.

8.02 Amendment. These By-Laws may be amended, modified, or revoked in any respect from time to time by Developer prior to the election of the first Board to succeed the Developer, and thereafter by not less than sixty-seven percent (67%) of the votes of those Members of the Association who are present or represented at a meeting duly called for that purpose, PROVIDED, HOWEVER, that the contents of these By-Laws shall always contain those particulars which are required to be contained herein by the laws of the State of Tennessee. At any such meeting the Developer shall have the number of votes as provided in Section 4.02 hereof. Notwithstanding the

foregoing, any amendment shall not be required to be recorded with the Recorder's Office but must be kept on file with Developer or the Secretary and available to all Members upon written request.

8.03 Notices. Any notice required to be sent to any Member under the provisions of these By-Laws shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the Member on 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 Member 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, under the provisions of these By-Laws 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:

c/o Adams Development, LLC
1720 E. Boy Scout Road
Hixson, Tennessee 37343

8.04 Conflict. In the event of any conflict between these By-Laws and the provisions of the Charter, the Charter shall control and govern. In case of any conflict between the Declaration and these By-Laws, the Declaration shall control and govern.

8.05 Non-Waiver of Covenants. No covenants, restrictions, conditions, obligations or provision contained in the Declaration or these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

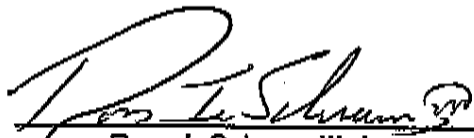
8.06 Agreements Binding. All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Declaration and these By-Laws shall be deemed to be binding on all Members, their heirs, successors and assigns.

8.07 Severability. The invalidity of any covenant, restriction, condition, limitation or any other provisions of these By-Laws, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of these By-Laws.

8.08 Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Charter and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable costs.

ADOPTION OF BY-LAWS

The undersigned as the Incorporator hereby adopts the foregoing By-Laws of the Association, this 8th day of June, 2002.



Ross I. Schram III, Incorporator

covenants
Declaration of Covenants and Restrictions for The Rose Garden Subdivision

THIS DECLARATION made this 14th day of September 1998, by ADAMS DEVELOPMENT, LLC, a Tennessee limited liability company (herein "Developer")

WITNESSETH;

WHEREAS, Developer, as owner of certain real property located in Hamilton County, Tennessee, as more particularly described in Exhibit A attached hereto (herein "Property"), desires to create thereon a development known as Rose Garden (herein "Development"); and

WHEREAS, Developer desires to provide for the preservation of the land values and home values when and as the Property is improved and desires to subject the Development to certain covenants, restrictions, easements, affirmative obligations, charges and liens, as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Development and each and every owner of any and all parts thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Development, to create an entity to which should be delegated and assigned to power and authority of holding title to an maintaining and administering the Common Properties (as hereinafter defined) 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

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Tennessee, ROSE GARDEN HOMEOWNERS' ASSOCIATION, INC., a Tennessee nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter;

NOW, THEREFORE, the Developer subjects the real property described in Article II, and such additions thereto as may hereafter be made, to the terms of this Declaration and declares 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. These Covenants shall touch and concern and run with the Property and each Lot thereof.

ARTICLE I
DEFINITIONS

The following words and terms, when used in the Declaration, or in any Supplemental Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

- 1.01 Architectural Review Committee. "Architectural Review Committee" shall mean and refer to that Committee formed and operated in the manner described in Section 4.01 hereof.
- 1.02 Association. "Association" shall mean ROSE GARDEN HOMEOWNERS' ASSOCIATION, INC., a Tennessee nonprofit corporation.
- 1.03 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association established and elected pursuant to this Declaration.
- 1.04 Builder. "Builder" shall mean any one of the home builders who have entered into an agreement with the Developer to purchase Lots and build spec Dwelling Units on the Lot in order for the Development to have an inventory of Dwelling Units for sale.
- 1.05 Bylaws. "Bylaws" shall mean the Bylaws of the Association, the initial text

covenants

of which is set forth in Exhibit B attached hereto and made a part thereof.

1.06 Common Expense. "Common Expense" shall mean and include (a) expenses of administration, maintenance, repair or replacement of the Common Properties; (b) expenses agreed upon as Common Expenses by the Association; (c) expenses declared Common Expenses by the provision of this Declaration; and (d) all other sums assessed by the Board of Directors pursuant to the provisions of the Declaration.

1.07 Common Properties. "Common Properties" shall mean and refer to those tracts of land any improvements thereon which are deeded or leased to the Association and designated in said deed or lease as "Common Properties." The term "Common Properties" shall also include any personal property acquired by the Association if said property is designation as a "Common Property". All Common Properties are to be devoted to and intended for the common use and enjoyment of the Owners, persons occupying Dwelling Units or accommodations of Owners on a guest or tenant basis, and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association; provided, however, that any lands which are leased by the Association for use as Common Properties shall lose their character as Common Properties upon the expiration of such Lease. The common properties may include but not be limited to street lights, entrance and street signs, pool, pool house, parks, ponds, medians in roadways, maintenance easement areas, and landscaping easement areas.

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

1.09 Declaration. "Declaration" shall mean this Declaration of Covenants and Restrictions for Rose Garden and any Supplemental Declaration filed pursuant to the terms hereof.

1.10 Developer. "Developer" shall mean Adams Development, LLC, a Tennessee limited liability company and its successors and assigns.

1.11 Dwelling Unit. "Dwelling Unit" shall mean any building situated upon the Properties designated and intended for use and occupancy by a single family.

1.12 First Mortgage. "First Mortgage" shall mean a recorded Mortgage with priority over other Mortgages.

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

1.14 Lot or Lots. "Lot" or "Lots" shall mean and refer to any improved or unimproved parcel of land located within the Property which is intended for use as a site for a single-family detached Dwelling Unit as shown upon recorded final subdivision map of any part of the Property, with the exception of the Common Properties.

1.15 Member or Members. "Member" or "Members" shall mean any or all owner or Owners.

1.16 Mortgage. "Mortgage" shall mean a deed of trust as well as a Mortgage.

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

1.18 Owner. "Owner" shall mean and refer to the Owner as shown by the real estate records in the office of the Recorder, whether it be one or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Lot, situated upon the Property, but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to Mortgagee or hold of a security deed, its

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successors or assigns, unless and until such Mortgagee or holder of a security deed has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is recorded in the office of the Recorder, a long-term contract of sale covering any Lot within the Property, the Owner of such Lot shall be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the period extending beyond twelve (12) months from the date of the contract, and where the purchaser does not receive title to the Property until such payments are made although the purchaser is given the use of said Property. The Developer may be an Owner.

1.19 Property. "Property" shall mean and refer to the real property described in Section 2.01 herof, and additions thereto, which is subjected to this Declaration or any supplemental declaration under the provisions hereof.

1.20 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 the title to real property.

1.21 Recorder. "Recorder" shall mean and refer to the Register of Deeds of Hamilton County, Tennessee.

ARTICLE II

PROPERTIES, COMMON PROPERTIES and IMPROVEMENTS THEREON

2.01 Property. The covenants and restrictions set forth in this Declaration, as amended from time to time, are hereby imposed upon the real property located in Hamilton County, Tennessee and more particularly described in Exhibit A attached hereto and additions or amendments thereto, which shall hereafter be held, transferred, sold, conveyed, used, leased, occupied and mortgaged or otherwise encumbered subject to the Declaration. Additionally, any easements on any real property retained by or granted to the Developer or the Association for the purpose of erection and maintenance of entrance signs or street lights, or landscaping and maintenance thereof, shall also be considered Property and subject to these Covenants. Every person who is or shall be a record Owner shall be deemed by the taking of such record title to agree to all the terms and provisions of this Declaration.

2.02 Association. The Developer has caused the Association to be formed and incorporated under the laws of Tennessee for the purpose of carrying on one or more of the functions of a homeowners' association including, but not limited to, exercising all the powers and privileges and performing all the duties and obligations set forth in this Declaration. Every person who is an Owner is and shall be a Member of the Association as more particularly set forth in the Bylaws of the Association.

2.03 Mergers. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, in the alternative, the properties, rights and obligations may, by operation of law be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration.

2.04 Common Properties and Improvements Thereon. The Developer may install initially one or more entrance signs to the Development. The signs shall become part of the Common Properties when the Developer conveys the signs to the Association, at which time the Association shall become responsible for the the operation, maintenance, repair and replacement of the signs. The Developer may also landscape the entrance areas (whether privately or publicly owned) and other areas where it may or may not have reserved an easement. These areas shall become Common Properties when conveyed to the Association and the Association shall then become responsible for maintenance of the landscaped areas. Additionally, the Developer

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will install a pool, a pool house, one or more ponds, street lights and/or street signs which likewise will become Common Properties when conveyed to the Association. The Developer and the Association may add additional Common Properties from time to time as they see fit. The Common Properties shall remain permanently as open space except as improved, and there shall be no subdivision of same, except as otherwise provided herein. No building structure or facility shall be placed, installed, erected, or constructed in or on the Common Properties unless it is purely incidental to one or more of the uses above specified. The Developer may reserve to itself or its designees the exclusive use of any portion of the Common Properties for the placement and use of a mobile home as a sales office and as storage areas or construction yards as may be reasonably required, convenient or incidental to the sale of Lots and/or the construction improvements on the Common Properties.

ARTICLE III

COVENANTS, USES AND RESTRICTIONS

3.01 Application. It is expressly stipulated that the Restrictive Covenants and conditions set forth in the Article III apply solely to the Property described in Exhibit A which Property is intended for use as single-family residential Lots only. These Restrictive Covenants and Conditions are not intended to apply to any other lots, tracts or parcels of land in the area or vicinity, owned by the Developer. Specifically, the Developer, its successors or assigns, reserve the right to use or convey such other lots, tracts and parcels with different restrictions.

3.02 Residential Use.

A. All of the Lots in the Development shall be, and be known and described as, residential lots, and no structure shall be erected, altered, placed or permitted to remain on any Lot other than as provided in these Covenants and Restrictions and in supplements hereto, or except as provided for in a deed of conveyance from the Developer.

B. "Residential", refers to a mode of occupancy as used in contradistinction to "business" or "commercial" or "mercantile" activity and, except where otherwise expressly provided, "residential" shall apply to temporary as well as permanent uses, and shall apply to vacant Lots as well as to buildings constructed thereon.

C. No Lot may be used as a means to service to business establishments or adjacent property, including but not limited to supplementary facilities or an intentional passageway or entrance into a business or another tract of land, whether or not a part of the Property, unless specifically consented to by Developer or the Board in writing.

3.03 No Multi-Family Residences, Business, Trucks. No residence shall be designed, patterned, constructed or maintained to serve, or for the use of more than on single family, and no residence shall be used as a multiple family Dwelling Unit at any time, nor used in whole or in part for any business service or activity, or for any commercial purpose; nor shall any Lot be used for business purposes, or for trucks or other equipment inconsistent with ordinary residential uses. No panel, commercial or tractor trucks shall be habitually parked in driveways or overnight on streets in front of any of the Lots. Nothing contained herein shall prohibit the Developer or the Association from permitting, maintaining, or operating concessions or vending machines on the Common Properties.

3.04 Minimum Square Footage. No single-family detached Dwelling Unit shall be erected or permitted to remain in the Property unless it has the number of square feet of enclosed living area measured from the exterior walls, exclusive of open porches or screened porches, carports, garages or basements, set forth in this section. For the purposes of this section, stated square footage shall mean the minimum floor area required, and floor area shall mean the finished and heated living area contained within the residence, exclusive of open porches, garages, and steps. In the case of any question as to whether a sufficient number of square feet of enclosed living area have been provided, the declaration of the Developer or the Architectural Review Committee shall be final. The minimum number of square feet

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required may be increased by the Developer as to any Lot(s) prior to the sale thereof by Developer. This Declaration shall be supplemented to incorporate any such increase in minimum number of square feet required. The minimum number of square feet initially set forth in this Declaration shall be set forth on the recorded plat for the Property. The minimum number of square feet required in the development is as follows:

- (i) A single-level home shall contain not less than 2,200 square feet.
- (ii) A split-level home shall contain not less than 2,300 square feet.
- (iii) A two-level home shall contain not less than 2,400 square feet.

3.05 Set-Backs. No building shall be erected on any Lot nearer than forty-five (45) feet to the front Lot line, twenty-five (25) feet from the rear Lot line and ten (10) feet from the side Lot lines, unless the side Lot line fronts on a street, in which case no building shall be erected nearer than twenty-five (25) feet to such side Lot line. For the purposes of this covenant, steps and open porches shall not be considered as part of the building, providing, however, this shall not be construed to permit any portion of the building on the Lot to encroach upon another Lot. No provision of the paragraph shall be construed to permit any structure to be constructed and erected upon any Lot that does not conform to the zoning laws and regulations applicable thereto; provided, however, that for good cause shown, an Owner may petition the Developer or the Architectural Review Committee for a variance from such set-back requirements. If the Developer or the Architectural Review Committee grants such petition, the Developer or the Association will not oppose such Owner's attempt to obtain a variance from applicable zoning laws and regulations.

3.06 Rearrangement of Lot Lines. Not more than one Dwelling Unit shall be erected or maintained on any one Lot. With the written approval of the Developer or the Board, contiguous Lots may be combined if the Lots have the same Owner, for the purpose of erecting an approved Dwelling Unit thereon; however, the assessments provided for herein will continue to be based upon the number of original Lots purchased. Except as provided in Section 3.40, Lots may not be subdivided so as to create a smaller area than originally deed to a Lot Owner and as shown on the subdivision plat.

3.07 Temporary Structures. No part of any Lot shall be used for residential purposes until a completed Dwelling Unit, conforming to the provisions of these Restrictive Covenants, shall have been erected thereon. The intent of this section is to prevent the use thereon of a garage, incomplete structure, trailer, barn, tent, outbuilding or other structure as temporary living quarters before or pending the erection of a permanent building. No structure of temporary character, including trailers and similar structures, shall be erected or permitted to remain on any Lot except during the period of construction. No house may be moved from another location to any Lot in this development.

Neither the foregoing nor any other section of this Declaration shall prevent the Developer or any building approved by the Developer from constructing a house for use as a model home that may contain office-type furniture and be used for conducting the business of either selling that house or other houses within the development, nor shall the foregoing or any other section of this Declaration prevent the Developer from designating a Lot or Lots from time to time for the temporary placement of a trailer or other suitable structure for use as an office and/or sales center by the Developer and/or approved builders at the sole discretion of the Developer.

3.08 Rainwater Drainage. Each Lot must be landscaped so that rainwater will drain into the street adjoining the Lot or into a drainage easement that drains into a street. Unless otherwise set forth on the recorded plat, Lot lines shall be the drainage easements. A Lot may not be landscaped so the rainwater runs into another Lot across an established drainage easement.

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- 3.09 Utility Easement. A perpetual easement is reserved on each Lot, as shown on the recorded plat, for the construction and maintenance of utilities such as electricity, gas, water, sewerage, drainage, etc., and no structure of any kind shall be erected or maintained upon or over said easement.
- 3.10 Frontal Appearance. All Dwelling Units shall have conventional and acceptable frontal appearance from the main street fronting said Lots.
- 3.11 Building Requirements. All buildings or structures of any kind constructed on any Lot shall have full masonry foundations and chimneys, and no exposed block, concrete or plastered foundations shall be exposed to the exterior above grade level. The exterior of the front of each Dwelling Unit must be covered with sto, brick, stone, or combination thereof. Alternatively, the exterior of the Dwelling Unit may be all lap siding provided that the lap siding is true lap siding and not artificial laps. Any other material must be approved in writing by the Developer or the Architectural Review Committee. All exposed concrete block or poured concrete foundations and retaining walls must be covered with stone, brick, or sto to compliment the house. All sheet metal work (roof caps, flashings, vents, chimney caps) must be painted to match the roof. Gutters and downspouts must be painted in approved colors. All roof stocks and plumbing vents must be placed on rear slopes of roofs; provided however, that for good cause shown, the Developer or the Architectural Review Committee may make exceptions as to the placement of such roof stocks and plumbing vents. Any above ground level swimming pool must be approved by the Architectural Control Committee prior to the commencement of the construction.
- 3.12 Fences. No fences will be allowed on any Lot without the prior written consent of the Developer or the Architectural Review Committee. Wire or chain link fences are prohibited. All wood fences must be painted. No fencing shall be located forward of the rear line of the Dwelling Unit. All proposed fences must be submitted to the Developer or the Architectural Review Committee showing materials, design, height and location.
- 3.13 Driveways. Each Dwelling Unit constructed upon a Lot must be served by a driveway constructed of hard surface materials such as concrete, brick, exposed aggregate, or pre-cast pavers. No driveway shall be constructed on any Lot nearer than one (1) foot to any Lot line. All other hard surface materials must be approved by the Developer or the Architectural Review Committee. Where a Lot borders on more than one street, the Lot shall be entered from the secondary street. It shall be obligatory upon all owners of Lots in this subdivision to construct or place any driveways, culverts, or other structures, or gradings, which are within the specifications therefor, as set forth on the recorded subdivision plat, in order that the roads or streets, which may be affected by such placement or construction, may not be disqualified for acceptance into the road system of Hamilton County, Tennessee.
- 3.14 Curbs. No permanent cuts may be made in the curbs for any purpose other than driveways. Curb cuts shall be made with a concrete saw at the curb and along the gutter. Irregular cuts using sledge hammers and the like are prohibited. Driveways shall be added so as to form a smooth transitional surface with the remaining curb at locations where the approved driveway locations meet the street. Damaged curbs shall be replaced by the Owner of the adjoining Lot unless the damage is caused by another who causes the damage to be corrected. Notwithstanding the foregoing, nothing herein shall permit any curb cuts where such cuts are prohibited by any applicable city, county or state regulation, ordinance or law.
- 3.15 Signs. One sign offering the Lot and/or Dwelling Unit for sale and one sign reflecting the name of the builder may be placed upon a Lot. Such sign must be in form approved by the Developer or Architectural Review Committee. No other signs shall be erected or maintained on any Lot, except in accordance with approved standards for signs as set by the Developer or the Architectural Review Committee.
- 3.16 Service Area. Each Dwelling Unit shall provide an area or areas on the rear

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or side yard of the Lot to accomodate air conditioner compressors, garbage cans, the electrical service entrance, or other ancillary residential functions that by nature may present an unsightly appearance. Service areas shall be convenient to the utility services and screened from view by an enclosure that is an integral part of the site development plan, using materials, colors or landscaping that are harmonious with the home it serves.

3.17 Garages. Each Dwelling Unit shall have at least a double-car garage constructed at the same time as the Dwelling Unit. Detached garages will be allowed only with written approval from the Developer or the Architectural Review Committee. No carports will be permitted. No garage door may face the street upon which the Dwelling Unit fronts provided, however, that for good cause shown, an Owner may petition the Developer or the Architectural Review Committee for a variance from such garage requirements. The inside walls of garages must be finished. Garage doors may not be allowed to stand open.

3.18 Landscaping. A landscape plan shall accompany every new home application submitted to the Developer or the Architectural Review Committee for approval. If a Dwelling Unit has a rear exterior which faces Common Property, another Lot or street, the Architectural Review Committee may require the placement of up to two (2) three (3) to four (4) inch caliper trees in the rear of the Lot to provide cover for the Dwelling Unit. Landscaping in accordance with the approved landscape plan must be substantially completed within one year after commencement of construction of the house. Shrubbery plantings adjacent to roadways and sidewalks shall not impede the vision of vehicle operators.

3.19 Windows. Materials to be used in windows and glass doors must be approved by the Developer or the Architectural Review Committee. Clad windows will be permitted. Metal and vinyl windows on the front of a Dwelling Unit are not permitted, nor are aluminum awnings permitted. However, metal and vinyl windows are permitted on the sides and rear of a Dwelling Unit.

3.20 Animals. No poultry, livestock or animals shall be allowed or maintained on any Lot at any time except that the keeping of dogs, cats or other household pets is permitted, providing that nothing herein shall permit the keeping of dogs, cats or other animals for commercial purposes. Pet owners shall not allow pets to roam unattended. The pet owners shall also muzzle any pet which consistently barks. If the barking persists, the pet owner shall have the pet removed from the Development. If the pet owner refuses, it shall be deemed an "offensive activity."

3.21 Zoning. Whether expressly stated so or not in any deed conveying any one or more of said Lots, each conveyance shall be subject to existing governmental zoning and subdivision ordinances or regulations in effect thereon.

3.22 Unsightly Conditions. All of the Lots in the Development must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs, dead trees, and other debris being removed when needed). Tree limbs, rocks and other debris must be kept out of the streets. In the event that an Owner of a Lot in the Development fails of his own volition, to maintain his Lot in a neat and orderly condition, Developer, or its duly appointed agent, or the Board, or its duly appointed agent, may enter upon said Lot without liability and proceed to put said Lot into an orderly condition, billing the Owner two hundred fifty percent (250%) of the cost of such work. All Owners in the Development are requested to keep cars, trucks and delivery trucks off the curbs of the streets.

3.23 Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance, discomfort, embarrassment or nuisance to the Development.

3.24 Detached Buildings. There shall be no detached garages, outbuildings or servants quarters, without the prior written consent of the Developer or the Architectural Review Committee.

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- 3.25 Sewage Disposal. Before any Dwelling Unit on a Lot shall be occupied, a connection with the municipal sewer system meeting applicable municipal codes shall be made. There shall not be erected, permitted, maintained or operated on any Lot any privy, cesspool, vault or septic system without written approval from the Developer or the Board.
- 3.26 Permitted Entrances. In order to implement and effect insect, reptile and woods fire control, and to maintain unsightly Lots, the Developer or the Board, or their respective agents, may enter upon any Lot on which a Dwelling Unit has not been constructed and upon which no landscaping plan has been implemented, such entry to be made by personnel with tractors or other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Developer or the Board detracts from the overall beauty, setting and safety of the Property or Lots. Such entrance for the purpose of mowing, cutting, clearing or pruning shall not be deemed a trespass. The Developer and its agents or the Board and its agents may likewise enter upon a Lot to remove any trash which has been collected on said Lot without such entrance and removal being deemed a trespass. The provisions of this section shall not be construed as an obligation on the part of the Developer and its agents or the Board and its agents to mow, clear, cut or prune any Lots or to provide garbage or trash removal services. Expenses incurred for any of the foregoing shall be chargeable to and recoverable from the Owner of the Lot upon which such work is done.
- 3.27 Tree Removal. No live trees or shrubs having a diameter greater than six (6) inches shall be removed prior to obtaining approval of the Developer or the Architectural Review Committee. Any Owner who, without having obtained approval from the Developer or the Architectural Review Committee, cuts down or who allows to be cut down any tree having a diameter of six (6) inches or greater shall be liable to the Association for liquidated damages in the amount of One Thousand and No/100 Dollars (\$1,000.00) for each tree so cut. The majority of the tree may not be removed from any Lot except in the area of the Lot upon which the house and driveway are to be constructed. Except for view enhancement, excessive removal of trees will be deemed to be a nuisance to the adjoining neighbors and will mar the beauty of the Development.
- 3.28 Tanks and Garbage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and such tanks or receptacles may be installed only within a Dwelling Unit, within a screened area or buried underground. All garbage and trash containers must be placed in enclosed areas of the rear or side yard and must not be visible from adjoining Lots, houses, or from any street.
- 3.29 wells. No private wells may be drilled or maintained on any Lot without the prior written consent of the Developer or the Architectural Review Committee.
- 3.30 No Antennas. No television antenna, dish, radio receiver or sender or ther similar device shall be attached to or installed on the exterior portion of any Dwelling Unit or other structure on the Property or any Lot within the Development without the prior written consent of the Developer or the Architectural Review Committee; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other of such properties. Small (i.e. 18" diameter) satellite receivers may be installed only in locations approved by the Developer or the Architectural Review Committee which shield them from view from any street adjacent to subject Lot. Notwithstanding the foregoing, the provisions of this section shall not prohibit the Developer from installing equipment necessary for a master antenna system, security system, cable television, mobile radio system or other similar systems within the Development.
- 3.31 Excavation. No owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which will materially affect the surface grade of a Lot

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unless the consent of the Developer or the Architectural Review Committee is obtained.

3.32 Sound Devices. No exterior speaker, horn, whistle, bell or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used, or placed upon Lots within the Development. The playing of loud music from any balconies or porches shall be offensive, obnoxious activity constituting a nuisance.

3.33 Laundry. No Owner, guest, or tenant, shall hang laundry from any area within or outside a Dwelling Unit if such laundry is within public view, or hang laundry in full public view to dry, such as a balcony or terrace railings. This provision may, however, be temporarily waived by the Developer or the Board during a period of severe energy shortages or other conditions where enforcement of this section would create a hardship.

3.34 Mailboxes. Mailboxes of a type consistent with the character of the property shall be selected and placed by the Owner of each Lot and shall be maintained by the Owner to complement the residences and the neighborhood. Design for mailboxes must be approved by the Developer or the Architectural Review Committee.

3.35 Duty to Rebuild or Clear and Landscape Upon Casualty or Destruction. In order to preserve the aesthetic and economical value of all Lots within the Development, each Owner and Developer (with respect to improved Property owned by the Developer) shall have the affirmative duty to rebuild, replace, repair, or clear and landscape, within a reasonable period of time, any building, structure or improvement or significant vegetation which shall be damaged or destroyed by fire, or other casualty. Variations and waivers of the provision may be made only upon Developer or the Board establishing that the overall purpose of these Restrictive Covenants would be best effected by allowing such variation. Variations to this section are to be strictly construed and the allowance of a variance by the Developer or the Board shall not be deemed to be a waiver of the binding effect of the section upon all other Owners.

3.36 Vehicle Parking. Cars owned by Lot Owners shall be parked only in the Owner's garage or driveway. No inoperable vehicle, tractor, or other machinery shall be stored outside on the premises at any time, even if not visible from the street. No house trailer or such vehicle shall be stored on the premises. Recreational vehicles, vacation trailers, campers and boats must be stored and hidden from view within the garage. Such vehicles may not be stored anywhere else on the Lot.

3.37 Maintenance. Each Lot Owner shall, at all times, maintain all structures located on such Lot, including driveways and permitted fences, in good repair which shall include exterior painting as needed, and each Lot Owner shall keep all vegetation and landscaping in good and presentable condition.

3.38 Approved Builders. Only builders that have been approved by the Developer shall be permitted to construct Dwelling Units in the Development. The Developer shall maintain a list of approved builders which list shall be made available to Lot Owners and prospective purchasers. The Developer may from time to time, in its sole discretion, change the approved builders' list by adding names of additional builders and/or deleting names of builders no longer approved. An Owner shall be permitted to contract with a particular builder for construction of a Dwelling Unit only if that builder is on the approved builders' list at the time the construction contract is entered into.

3.39 Occupancy Before Completion. Except with the written consent of the Association based on adequate assurance of prompt completion of a Dwelling Unit, an Owner shall not occupy a Dwelling Unit until the Dwelling Unit and seasonal landscaping conforming fully to the provisions of this instrument shall have been erected and fully completed thereon. Once the footings of any Dwelling Unit or other structure are poured, construction must progress continuously (with allowance for weather conditions, labor conditions and availability of materials) until the

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building is fully completed. The exterior (including landscaping) must be completed within twelve (12) months after commencement of construction. The Owner of any Lot violating either of these provisions shall be liable to the Association for liquidated damages at the rate of Fifty and No/100 (\$50.00) per day the violations occur, and to payment of such court costs and attorney's fees as may be incurred in the enforcement of these provisions. In the event construction does not progress continuously, the liquidated damages shall commence ten (10) days after notice from the developer or the Architectural Review Committee if construction is not resumed within said ten (10) days.

3.40 Developer Reserves Right. Notwithstanding any other provision herein to the contrary, the Developer reserves unto itself, its successors and assigns, the following rights, privileges and powers: to subdivide Lots, to combine Lots or parts of Lots, to rearrange boundaries of Lots, to cause any part of any Lot to become part of the Common Properties, and to cause portions of Common Property Lots to become part of any of the Lots bordering them, provided that no more than 5,000 square feet at any one given Common Property Lot may be added to any given Lot bordering it, and provided that not more than 5,000 total square feet of any one given Common Property Lot may be added to the Lots bordering it.

3.41 Lawn Care. All unimproved Lots (except those owned by the Development) and all improved Lots must be fully seeded with grass (except where other provisions hereof require sodding) and regularly cut.

3.42 Roofs. Roof pitches must be a minimum of 9/12, unless otherwise approved by the Developer or the Architectural Review Committee.

3.43 Fireplaces. All fireplace inserts must be capped with a shroud at the point where the flue reaches the top of the chimney.

3.44 Chimneys. Chimneys must be constructed of brick, sto or stone, and those chimneys on the exterior must have a foundation.

3.45 Adjoining Lot Damage. Any damage done to any adjacent or adjoining Lot or by a contractor employed to build improvements on any Lot will be repaired immediately at the expense of the Owner or contractor. Temporary construction support must be provided for the curbs and sidewalks by the owner or contractor during the time of construction. All construction debris shall be removed weekly and the street must be kept clear during construction.

3.46 Material Quality. Only good quality materials and design will be accepted on any structure built on any Lot. Permastone and asbestos shingles are specifically prohibited. No concrete blocks shall be used above the finished ground elevation of any structure unless said blocks are covered with brick veneer, stone or other material acceptable to the Developer or the Architectural Review Committee.

3.47 Air Conditioning and Heating Units. Air conditioning and heating units shall be architecturally screened or landscaped so as not to be visible from any street.

3.48 Sidewalks. It is the obligation of each Lot owner subsequent to Developer to install a sidewalk along lines of the Lot which front a road except in those cases in which a burm on his Lot fronts the road in accordance with Developer or Architectural Review Committee specifications by the time the Dwelling Unit is completed or within one (1) year from the date of purchase of the Lot, whichever is earlier.

3.49 Sodding. Prior to occupancy of a Dwelling Unit, the front yard and side yards of the Lot must be sodded. Prior to occupancy may be approved by the Developer or the Architectural Review Committee if weather conditions prohibit sodding.

3.50 Exterior Siding. All exterior siding must be approved in writing by the Developer or the Architectural Review Committee. All wood or masonite siding must have laps no greater than six (6) inches. Dwelling Units using masonite siding on

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all exterior sides must be true lap siding and not artificial laps.

3.51 No Waterway Use. No boat of any kind shall be permitted upon, nor shall any swimming be permitted in any pond on the Common Properties. No garbage, trash, or other refuse shall be dumped into any pond on the Common Properties. Owners will be assessed a \$500.00 fine for each violation of this provision in addition to assessments for the cost of removal.

3.52 Decks. All exterior wood decks railing which faces Common Property, another Lot or street must be painted in accordance with the requirements of the Developer or the Architectural Review Committee.

3.53 Renting or Leasing. No Dwelling Unit may be rented or leased for a period of time that is less than six (6) months.

3.54 Violations and Enforcement. In the event of the violation, or attempted violation, of any one or more of the provisions of these Restrictive Covenants, the Developer, its successors or assigns, or the Association, its successors or assigns, including all parties hereinafter becoming Owners of any one or more of the Lots to which provisions of these Restrictive Covenants apply, may bring an action or actions against the owner in violation, or attempting violation, and the said 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. In the event of a violation of set-back lines, side, rear or front, which may be minor in character, a waiver thereof may be made by the Developer, its successors or assigns or the Board. Further, the Developer or the Board may grant variances of the restrictions set forth in these Restrictive Covenants if such variances do not, in the sole discretion of the Developer or the Board, adversely affect the purposes sought to be obtained hereby.

By reason of the rights of enforcement of the provisions of this section being given unto Owners of Lots (subject to rights of variances reserved by the Developer and the Board), it shall not be incumbent upon the Developer or the Board to enforce the provisions of these Restrictive Covenants or to prosecute any violation thereof. Developer shall not be responsible or liable for any violation of these Restrictive Covenants by any person other than itself.

ARTICLE IV ARCHITECTURAL CONTROL

4.01 Architectural and Design Review.

A. In order to preserve, the extent possible, the natural beauty of the Property and its setting, to maintain a pleasant and desirable environment, to establish and preserve an harmonious design for the Development, and to promote and protect the value of the Property, the Developer or the Board shall create a body of rules and regulations covering details of Dwelling Units, which shall be available for all Owners or prospective Owners of Lots.

B. The Developer shall have sole architectural and design reviewing authority for the Development until the Developer has transferred governing authority to the Board in accordance the the Bylaws; provided, however, that prior to calling the meeting of the Association to elect a Board to succeed the Developer as provided in the Bylaws, the Developer may execute and record in the office of the Recorder a document stating that the Developer reserves unto itself, its successors or assigns, the architectural and design reviewing authority provided in this Article, and stating that said reservation, notice of which is thus provided, shall survive the election of the Board to succeed the Developer. Thereafter, the Developer shall continue to exercise the rights thus reserved to it until such time as it shall execute and record in the office of the Recorder a document assigning these rights to the Board. Upon such occurrence, the Board shall establish an Architectural Review Committee as soon as is practicable. When such Committee has been established, the Developer shall transfer reviewing authority to the Committee.

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C. No Dwelling Unit, other building, structure, fences, exterior lighting, walls, swimming pools, children's play areas, decorative appurtenances, or structures of any type, shall be erected, placed, added to, remodeled or altered and no trees or shrubs shall be cut or removed and no grading shall be commenced until the proposed building plans and specifications (including height, and composition of roof, siding, or other exterior materials and finish), plot plan (showing the proposed location of such Dwelling Unit, building or structure, drives and parking areas, drainage plan, landscape plan or construction schedule, as the case may be, shall have been submitted to the Developer or the Architectural Review Committee for approval at least thirty (30) days prior to the proposed date of construction. In addition, repainting of any substantial portion of the exterior of any structure in a manner not previously approved by the Developer or the Architectural Review Committee shall be subject to prior approval of the Developer or the Architectural Review Committee as provided in the preceding sentence. The Developer or the Architectural Review Committee shall give written approval or disapproval of the plans within 30 days of submission. However, if written approval or disapproval is not given within 30 days of submission, the plans shall be deemed to have been approved. Developer or the Architectural Review Committee may, by written notice given from time to time to the Owners of Lot, exempt certain matters of a non-essential nature from the review requirements subject to the terms and conditions and for the time periods established by Developer or Architectural Review Committee. In the event of the completion of any Dwelling Unit on any Lot, without any proceedings having been instituted in the courts of Hamilton County, Tennessee to enjoin the construction thereof, the said Dwelling Unit shall be conclusively presumed to have had such approval.

D. The Developer or Architectural Review Board shall charge a fee for each application submitted for review. The amount of the fee shall be set and adjusted from time to time in the sole discretion of the Developer or Architectural Review Board.

E. The architectural and design review shall be directed toward preventing excessive or unsightly grading, indiscriminate clearing of property, removal of trees and vegetation which would cause disruption of natural water courses, insuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the surrounding property and improvements thereon, an insuring that plans for landscaping provide visually pleasing settings for structures on the same Lot and on adjoining or nearby Lots.

4.02 Approved standards. Approval of any proposed building plan, location, specifications or construction schedule submitted under this Article will be withheld unless such plans, location and specifications comply with the applicable Restrictive Covenants and Conditions of this Declaration and unless such construction schedule complies with the provisions of this Article. Approval of the plans and specifications by the Developer or the Architectural Review Committee is for the mutual benefit of all Owners and is not intended to be, and shall not be construed as, an approval or certification that the plans and specifications are technically sound or correct from an engineering or architectural viewpoint. Each Owner shall be individually responsible for the technical aspect of the plans and specifications.

4.03 Licensing. All contractors, landscape architects and other performing work on any Lot must be licensed as may be required by the State of Tennessee or any other governmental authority having jurisdiction in order to construct a residence on a Lot or perform services for an Owner.

ARTICLE V ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptance of a deed conveying a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all of the

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terms and provisions of these covenants and pay to the Association annual assessments and special assessments for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Owner of each Lot shall be personally liable, such liability to be joint and several if there are two or more Owners, to the Association for the payment of all assessments, whether annual or special, which may be levied while such party or parties are the Owners of a Lot. The annual and special assessments, together with such 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 interest from due date to date of the payment at the rate set by the Board, and said rate can be changed from time to time so that the rate is reasonably related to the economic situation. In the event that two or more Lots are combined into a single Lot by an Owner, the assessments will continue to be based upon the number of original Lot purchased. In the event three or more Lots are combined into a single Lot by an Owner, the assessments will continue to be based upon the number of original Lots purchased. In the event three or more Lots are combined into two or more Lots by an Owner, the assessments will continue to be based upon the number of original Lots, and if any original Lot is subdivided, the assessment on such original Lot shall be prorated between the Owner based upon the square footage owned by such Owner.

5.02 Purpose of Annual Assessments. The annual assessments levied by the Association 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.

5.03 Amount of Annual Assessment. Until the transfer of governing authority from the Developer to the Board takes place as described in the Bylaws, the amount of the annual assessments shall be set by the Developer at such amount as the Developer, in its sole discretion, deems appropriate to promote the recreation, health, safety and welfare of its Members. Thereafter, the amount of the annual assessments shall be set by the Board unless seventy-five percent (75%) of the Members who are in attendance or represented by proxy at the annual or any special meeting of the Association vote to increase or decrease the said annual assessment set by the Board. At any such meeting, the Developer shall have the number of votes as provided in the Bylaws.

5.04 Special Assessments for Improvements and Additions. In addition to the annual assessments, the Association may levy special assessments 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 upon the Common Properties, including the necessary fixtures and personal property related thereto, or the cost of any addition to the Common Properties, provided that any such assessment shall have the assent of seventy-five (75%) of the vote of the Members who are in attendance or represented at a duly called meeting of the Association, written notice of which shall be sent all Members at least thirty (30) days in advance setting forth the purpose of the meeting. At any such meeting, the Developer shall have the number of votes as provided in the Bylaws.

5.05 Property subject to Assessment. Only land within the Property which has been subdivided into Lots, and the plats thereof filed for public record, shall constitute a Lot for purposes of these assessments.

5.06 Exempt Property. No Owner may exempt himself from liability for any assessment levied against his Lot by waiver of the use or enjoyment of any of the Common Properties or by abandonment of his Lot in any other way.

The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein.

a. The grantee of a utility easement.

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- b. All properties dedicated and accepted by a local public authority and devoted to public use.
- c. All Common Properties as defined in Article I hereof.
- d. All properties exempted from taxation by the laws of the State of Tennessee upon the terms and to the extent of such legal exemptions. This exemption shall not include special exemptions, now in force or enacted hereinafter, based upon age, sex, income levels or similar classification of the owners.
- e. Developer - owned Lots.
- f. Builder- owned Lots for a period commencing on the date the Lot is conveyed by Developer to the date the Builder sells the Lot to the Owner or the expiration of twenty-four (24) month from the date title to the Lot is conveyed by Developer to the Builder, whichever shall first occur.

5.07 Date of Commencement of Annual Assessments.

- A. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Developer to be the date of commencement. The Developer shall have the financial responsibility to physically maintain the Common Properties until the date of commencement of such assessments.
- B. The amount of the first annual assessment shall be based pro rata upon the balance of the calendar year and shall become due and payable on the date of commencement. The assessments for any year after the first year shall become due and payable the first of January of each year; however, the Board may authorize payment in four (4) equal quarterly payments.
- C. The due date of any special assessment shall be fixed in the resolution authorizing such assessment.

5.08 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 the 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 shall become effective on a Lot immediately upon the closing of that Lot. The lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Tennessee. Failure by the owner or Owners 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.

5.09 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 the Declaration, the Association, upon written request of 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; and such statement shall also included, if requested, 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 any 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.

In the event that a Lot is to be leased, sold or mortgaged at the time when payment of any assessment against said Lot shall be in default, then the rent, proceeds of such purchaser or mortgage shall be applied by the lessee, purchaser or Mortgagee first to payment of any then delinquent assessment or installments thereof due to

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

ARTICLE VI

REGISTER OF OWNERS AND SUBORDINATION OF LIENS AND MORTGAGES

6.01 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 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. 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. The Association may rely on such register for the purpose of determining the Owners of Lots and holders of Mortgages.

6.02 Subordination of Lien to First Mortgages. The liens provided for in this Declaration shall be subordinate to the lien if 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 any such First Mortgagee (i.e., one who records a Mortgage on a Lot for which all assessments have been paid prior to recording) 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 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 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.

6.03 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.

ARTICLE VII

OWNER COMPLAINTS

7.01 Scope. The procedures set forth in this Article for Owner Complaints shall apply to all complaints regarding the use or enjoyment of the Property or any portion thereof or regarding any matter within the control or jurisdiction of the Association, including, without limitation, decisions of the Association or of the Board of Directors of the Association.

7.02 Grievance Committee. There shall be established by the Board a Grievance Committee to receive and consider all Owner complaints. The Grievance Committee shall be composed of the President of the Association and two other Owners appointed by and serving at the pleasure of the Board of Directors, or the Manager may be appointed by the Board to function as the Grievance Committee.

7.03 Form of Complaint. All complaints shall be in writing and shall set forth the substance of the complaint and the facts upon which it is based. Complaints are to

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be addressed to the President of the Association and sent in the manner provided in Section 10.03 for sending notices.

7.04 Consideration by the Grievance Committee. Within twenty (20) days of receipt of a complaint, the Grievance Committee shall consider the merits of the same and notify the complainant in writing of its decision and the reasons therefor. Within ten (10) days after notice of the decision, the complainant may proceed under Section 7.05; but if the complainant does not, the decision shall be final and binding upon the complainant.

7.05 Hearing Before the Grievance Committee. Within ten (10) days after notice of the decision of the Grievance Committee, the complainant may, in a writing addressed to the President of the Association, request a hearing before the Grievance Committee. Such hearing shall be held within twenty (20) days of receipt of complainant's request. The complainant, at his expense, and the Grievance Committee, at the expense of the Association, shall be entitled to legal representation at such hearing. The hearing shall be conducted before at least two members of the Grievance Committee and may be adjourned from time to time as the Grievance Committee in its discretion deems necessary or advisable. The Grievance Committee shall render its decision and notify the complainant in writing of its decision and the reasons therefor within ten (10) days of the final adjournment of the hearing. If the decision is not submitted to arbitration within ten (10) days after notice of the decision, as provided for in Section 7.07, the decision shall be final and binding upon the complainant.

7.06 Questions of Law. Legal counsel for the Association shall decide all issues of Law arising out of the complaint, and such decisions shall be binding on the complainant.

7.07 Questions of Fact; Arbitration. If there shall be any dispute as to any material fact, either the Grievance Committee or the complainant may, at their option, within ten (10) days after notice of the decision as provided for in Section 7.05, 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 Grievance Committee. In the event of arbitration, each party shall bear one-half of the expense thereof.

7.08 Exclusive Remedy. The remedy of Owner complaints provided herein shall be exclusive of any other remedy, and no Owner shall bring suit against the Grievance 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.

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

ARTICLE VIII REMEDIES OF DEFAULT

8.01 Scope. Each Owner shall comply with the provisions of this Declaration, the Bylaws 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 responsible for the actions of his or her family members, servants, guests, occupants, invitees or agents.

8.02 Grounds for and Form of Relief. Failure to comply with any of the Covenants of this Declaration, the Bylaws, or the Rules and Regulations promulgated by the Board which may be adopted pursuant thereto shall constitute a default and shall entitle the Developer or the Association to seek relief which may include, without limitation, an action to recover any unpaid assessment, annual or special, together

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with interest as provided for herein, any sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Developer or the Association or, if appropriate and not in conflict with the provisions of this Declaration or the Bylaws by an aggrieved Owner.

8.03 Recovery of Expenses. If any proceeding arising because of an alleged default by an Owner, the Developer or the Association, if successful, shall, in addition to the relief for in section 8.02, 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 attorney's fees.

8.04 waiver. The failure of the Developer, the Association or an 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.

8.05 Election of Remedies. All rights, remedies and privileges granted to the Developer, the Association or an Owner or Owners pursuant to any term, provision, covenant or condition of this Declaration or the Bylaws 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.

ARTICLE IX EMINENT DOMAIN

9.01 Board's Authority. If all or any part of the Common Properties (excluding personalty) is taken or threatened to be taken by Eminent Domain, the Board or the Developer is authorized and directed to proceed as follows:

A. To obtain and pay for such assistance from such attorneys, appraisers, architects, engineers, expert witnesses and other persons, as the Board in its discretion deems necessary or advisable, to aid and advise it in all matters relating to such taking and its effect, including, but not limited to (i) determining whether or not to resist such proceedings or convey in lieu thereof, (ii) defending or instituting any necessary proceedings and appeals, (iii) making any settlements with respect to such taking or attempted taking and (iv) deciding if, how and when to restore the Common Properties.

B. To negotiate with respect to any such taking, to grant permits, licenses and releases and to convey all or any portion of the Common Properties and to defend or institute, and appeal from, all proceedings as it may deem necessary or advisable in connection with the same.

C. To have an exercise all such powers with respect to such taking or proposed taking and such restoration as those vested in Boards of Directors of corporations with respect to corporate property, including but not limited to, purchasing, improving, demolishing and selling real estate.

9.02 Notice to Owners and Mortgagees. Each Owner and each First Mortgagee on the records of the Association shall be given reasonable advance notice of all final offers before acceptance, proposed conveyances, settlements and releases, contemplated by the Developer or the Board, legal proceedings and final plans for restoration, and shall be given reasonable opportunity to be heard with respect to each of the same and to participate in and be represented by counsel in any litigation and all hearings, at such Owner's or Mortgagee's own expense.

9.03 Reimbursement of Expenses. The Developer and/or Board shall be reimbursed for all attorneys' fees, engineers', architects' and appraisers' fees, and other costs and expenses paid or incurred by it in preparation for, and in connection with, or

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as a result of, any such taking out of the compensation, if any. To the extent that the expense exceed the compensation received, such expenses shall be deemed a Common Expense.

ARTICLE X
GENERAL PROVISIONS

10.01 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 Developer or Owner, their respective legal representatives, heirs, successors and assigns, in perpetuity, unless amended or terminated as provided herein.

10.02 Amendments. This Declaration may be amended, modified or revoked in any respect from time to time by the Developer prior to the date that the governing authority for the Development is transferred from the Developer prior to the date that the governing authority for the Development is transferred from the Developer to the Board in accordance with the Bylaws. Thereafter, 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 considered at 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 the Bylaws, and, if considered at a special meeting, similar notice shall be included in the notice of the special meeting provided for in the Bylaws. Notice of any meeting to consider an amendment that would adversely affect Mortgagee's rights shall also be sent to each Mortgagee listed upon the register of the Association.

B. At any such meeting of the members of the Association, the amendment must be approved by an affirmative seventy-five percent (75%) vote of those Owners who are in attendance or represented at the meeting. At any such meeting, the Developer shall have the number of votes as provided in the Bylaws. Any amendment with adversely affects the rights of the Mortgagees must be approved by an affirmative seventy-five (75%) vote of the Mortgagees of which the Association has been properly notified (based upon one vote for each Lot on which a First Mortgagee is held) and who vote within the period of time set by the Board to vote, which shall be a least ten (10) days and no longer than sixty (60) days.

C. An amendment adopted under Paragraph B of this Section shall become effective upon its recording with the Recorder, and the President of the Association and Secretary of the Association shall execute, acknowledge and record the 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 or either, the Vice President of the Association shall be evidence to any person who relies thereon in good faith, including, without limitation, any Mortgagee, prospective purchaser, tenant, lienor or title insurance company that the amendment was adopted in accordance with the provisions of this section.

D. The certificate referred to in Paragraph C of this section shall be in substantially the following form:

CERTIFICATE

I, _____, do hereby certify that I am the Secretary of Rose Garden Homeowners' Association, Inc. and that the within amendment to the Declaration of Covenants and Restrictions of Adams Development, LLC was duly adopted by the Owners of said Association and the Mortgagees, if applicable, in accordance with the provisions of Section 10.02 of said Declaration.

witness my hand this _____ day of _____, _____.