

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
HERITAGE HEIGHTS

BOOK 5730 PAGE 329

This Declaration of Covenants, Conditions, and Restrictions is made this 1st day of November, 1985, by Homes by Heritage, Inc., a Tennessee corporation (hereinafter referred to as "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties, as hereafter defined, mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within Heritage Heights, the planned unit development established by and subject to this Declaration and amendments thereto by the recording of this Declaration. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as is now or may hereafter be submitted to this Declaration;

WHEREAS, Declarant desires that the real property described in Exhibit "A" be held, sold and conveyed subject to the provisions of this Declaration;

WHEREAS, there have presently been recorded certain Restrictive Covenants, of record in Book 5706, page 991, Register's Office for Davidson County, Tennessee, with respect to the Properties, and Declarant, as sole owner of the Properties and Units thereon, desires hereby to amend and supersede in all respects said Restrictive Covenants by recording this Declaration;

NOW, THEREFORE, Declarant hereby declares that all of the Properties described in Exhibit "A" and any additional property as may by Subsequent Amendment be added to the Properties and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. Such easements, restrictions, covenants and conditions are for the purpose of protecting the value and desirability of the Properties, and shall run with the real property submitted to this Declaration. They shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

Declarant further declares that the Restrictive Covenants of record in Book 5706, page 991, Register's Office for Davidson County, Tennessee, are amended and superseded hereby and shall hereafter be void and of no further force or effect.

ARTICLE I
Definitions

Section 1. "Additional Maintenance Area" shall mean those portions of a Residential Unit which the Association is responsible for maintaining, pursuant to Article IX, and those portions of a Residential Unit which by contract with the Owner the Association undertakes to maintain.

Section 2. "Assessments" shall mean Assessments for Common Expenses provided for herein or by any Subsequent Amendment, which shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Residential Units and of maintaining the Properties, all as may be specifically authorized from time to time by the Board of Directors and as more specifically authorized below.

Assessments shall be levied equally against Owners of Residential Units, except for Declarant as hereafter provided, for such purposes as are authorized by this Declaration or by the Board of Directors from time to time, provided that in the event of Assessments for exterior maintenance, insurance, or replacement reserves which pertain to particular Residential Units, such Assessments shall be levied upon a pro rata basis among benefited Owners.

There shall be an Annual Assessment, which shall mean the amount assessed yearly against such Owner as established from time to time by the Board. There may be Special Assessments assessed from time to time against each Owner, or a particular Owner, for construction, reconstruction, repair, or replacement of capital improvements to be established, collected, and used as provided herein.

Section 3. "Association" shall mean and refer to Heritage Heights Home Owners Association, Inc., a Tennessee nonprofit corporation, its successors and assigns.

Section 4. "Board of Directors" or "Board" shall be the elected body responsible for managing the affairs of the Association. Action required of or permitted by the Board herein may be taken or fulfilled by a committee or other designee as may be established or appointed by the Board in accordance with the Charter or By-Laws of the Association.

Section 5. "Common Area" shall mean all real and personal property, including the Properties, but excluding Residential Units and components thereof and easements appurtenant thereto, now or hereafter owned by the Association for the common use and enjoyment of the Owners, including, but not limited to, any and all streets, roads, bridges, parking areas, lakes, waterways, fences, structures, sidewalks, curbs, tennis courts, signs, lights, common utilities, and other improvements. The initial Common Area to be owned by the

Association shall be conveyed to the Association prior to the conveyance of a subdivision interest to any Residential Unit purchaser.

Section 6. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association and maintaining the Common Area, Limited Common Areas, and those portions of the Additional Maintenance Area which the Association is responsible for maintaining pursuant to Article IX, Section 2, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

Section 7. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in Heritage Heights subdivision, Brentwood, Tennessee.

Section 8. "Easement Areas" shall mean those portions of the Properties designated on the Plat as Easement Area and shall consist of that portion of the Common Area allocated by this Declaration and shown on the Plat as subject to and reserved for the exclusive use of one contiguous Residential Unit.

Section 9. "Limited Common Areas" shall mean those portions of the Properties designated on that Plat as Limited Common Area and which shall consist of that portion of the Common Area allocated by this Declaration and shown on the Plat for the exclusive use of one or more, but fewer than all, of the Residential Units.

Section 10. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

Section 11. "Mortgage" shall include a deed of trust, as well as a mortgage.

Section 12. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee.

Section 13. "Mortgagor" shall include the trustor of a deed of trust, as well as a mortgagor.

Section 14. "Owner" shall mean and refer to one or more Persons or entities, including Declarant, who hold the record title to any Residential Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Residential Unit is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the Owner. For the purpose of this Declaration, the Owner of a Residential Unit which is under lease shall be as follows: for the purpose of votes and assessments, the record owner of the Residential Unit; for the purpose of use and enjoyment of common facilities and amenities which are part of the Common Area, the tenant

residing in the Residential Unit. The Board of Directors may promulgate reasonable regulations conditioning such use upon registration of the names of tenants with the Association.

Section 15. "Person" shall mean a natural person, a corporation, a partnership, trustee, or other legal entity.

Section 16. "Plat" shall mean the recorded plan of the Properties, which is being recorded simultaneously herewith in Book 6260, page 353, and in Book 6250, pages 743 through 745, inclusive, Register's Office for Davidson County, Tennessee.

Section 17. "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto and shall further refer to such additional property as may hereafter be annexed by Subsequent Amendment to this Declaration.

Section 18. "Residential Unit" or "Unit" shall mean a portion of the Properties intended for any type of independent ownership for use and occupancy as a residence by a single family, whether a residence is constructed thereon or not. All Residential Units shall be shown and identified as numbered lots or units upon the Plat. A Unit shall include those Easement Areas contiguous and appurtenant to such Unit. A Unit may be attached by a party wall to another Unit or Units, or may consist of a lot on which a detached dwelling is to be or has been constructed.

Section 19. "Subsequent Amendment" shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Amendment to the provisions of this Declaration.

ARTICLE II Property Rights

Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to any restrictions or limitations contained in this Declaration or in any Deed or amendment thereto conveying to the Association or subjecting to this Declaration such property. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and social invitees subject to reasonable regulation by the Board and in accordance with procedures it may adopt.

Article III Membership and Voting Rights

Section 1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Residential Unit that

is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from such ownership, and any transfer of a Residential Unit shall operate automatically to transfer to the new record owner thereof the membership in the Association appurtenant thereto. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more persons, shall have more than one (1) membership per Residential Unit owned. In the event the Owner of a Residential Unit is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or a Member's spouse, but in no event shall more than one (1) vote for each class of membership applicable to a particular Residential Unit be cast for each Residential Unit, except for Class "B" Members as set forth below.

Notwithstanding the foregoing, Declarant may at any time assign, pledge, hypothecate or alienate its membership, but any transfer by Declarant of title to a Residential Unit shall automatically transfer the membership in the Association appurtenant thereto, free and clear from any such assignment.

Section 2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Members, if any. Class "A" Members shall include Owners of such Residential Units as may be annexed by Subsequent Amendment.

Class "A" Members shall be entitled on all issues to one (1) vote for each Residential Unit in which they hold the interest required for membership by Section 1 hereof; there shall be only one (1) vote per Unit. When more than one Person holds such interest in any Residential Unit, the vote for such Residential Unit shall be exercised as those Persons themselves determine and advise the Secretary of the Association prior to any meeting according to the procedures and other requirements set forth in the By-Laws. In the absence of such advice, the Residential Unit's vote shall be suspended in the event more than one Person seeks to exercise it.

Any Owner of Residential Units which are leased may, in the lease or other written instrument, assign the voting right appurtenant to that Residential Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

(b) Class "B". Class "B" Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded

members shall originally be entitled to four (4) votes for each Residential Unit owned. The Class "B" membership shall terminate and become converted to Class "A" membership upon the happening of the earlier of the following:

(i) when the total outstanding Class "A" votes with respect to the Properties, including any property added by Subsequent Amendment, equal or exceed eighty percent (80%);

(ii) the 30th day of December, 1994;

(iii) when, in its discretion, the Declarant so determines.

From and after the happening of these events, whichever occurs earliest, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each Residential Unit in which it holds the interest required for membership under Section 1 hereof. At such time, the Declarant shall call a meeting, as provided in the By-Laws for special meetings, to advise the membership of the termination of Class "B" status. Declarant shall also be a Class "B" Member with respect to Residential Units it owns which are annexed by Subsequent Amendment until such time as such membership is converted to Class "A" membership as set forth above.

Article IV Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Area, the Limited Common Areas, and the Additional Maintenance Area, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon the Common Area, the Limited Common Areas, and the Additional Maintenance Area, except landscaping immediately adjacent to a Unit as described below. In the event of the failure of the Association to maintain adequately the Common Areas, Section 81.51 of the Zoning Ordinance for Metropolitan Nashville and Davidson County, Tennessee, permits the appropriate official of the Metropolitan Government of Nashville and Davidson County, Tennessee, to provide such maintenance and charge the cost thereof to the Owners pro rata, which cost may become a lien against the Units.

Section 2. Owner's Responsibility. In accordance with this Declaration and Subsequent Amendments to this Declaration, and except as provided in Article IX, all maintenance of the interior portions of the Residential Unit; land, flora and landscaping within the boundaries of a Unit; those areas within enclosed patios, or courtyards;

all structural components of the Residential Unit; all patios, decks, balconies, and driveways serving only one Residential Unit; and other improvements not maintained by the Association shall be the sole responsibility of the Owner thereof, who shall maintain said portions of the Residential Unit in a manner consistent with the Community-Wide Standard of Heritage Heights in Brentwood, Tennessee, the applicable covenants set forth herein, and such rules and regulations as may be established by the Board of Directors from time to time. All landscaping immediately adjacent to the front, rear, or side exterior walls of an attached Residential Unit shall be maintained by the Owner of such Unit, notwithstanding the fact that such landscaping may be located on the Common Area or Limited Common Areas.

Article V Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area, Limited Common Areas, and those areas contained within the Additional Maintenance Area which the Association is responsible for maintaining, pursuant to Article IX, Section 2 hereof, against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard.

The Board shall also obtain a public liability policy covering the Common Area, Limited Common Areas, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000.00) limit per occurrence, and a Five Hundred Thousand Dollar (\$500,000.00) minimum property damage limit.

Premiums for all insurance as required by this Article V shall be Common Expenses of the Association. The policy or policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. Cost of insurance coverage shall be included in the Annual Assessment, as defined in Article X, Section 1.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefited parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company licensed to do business in Tennessee and holding a rating of BBB+ or better in the Financial Category as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.
- (b) All insurance policies shall be for the benefit of the Residential Unit Owners and their mortgagees as their interests may appear.
- (c) Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.
- (e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Brentwood, Davidson County area.
- (f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its Manager, the Owners, and their respective tenants, servants, agents and guests;
 - (ii) a waiver by the insurer of its rights to re-pair, and reconstruct, instead of paying cash;
 - (iii) that no policy may be cancelled, invalidated or suspended on account of any one or more individual Owners;
 - (iv) that no policy may be cancelled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized agent without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner, or mortgagee;
 - (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, workman's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three (3) months' Assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area, Limited Common Area and Additional Maintenance Areas or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of a Residential Unit and may be enforced by such mortgagee.

(b) If it is determined, as provided for in Section 3 of this Article, that the damage or destruction to the Common Area, Limited Common Areas and Additional Maintenance Areas for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 2(a) hereof.

(c) With regard to insurance proceeds relating to any Limited Common Area or Additional Maintenance Area, such proceeds are to be used exclusively for the reconstruction and repair of such improvements as are damaged.

Section 3. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and

adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the costs of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which it existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the total eligible vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

(c) Any damage or destruction to the Limited Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the total eligible vote of the Owners of Units to which said Limited Common Area is allocated shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Limited Common Area damage or destruction shall be repaired or reconstructed.

(d) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Area or Limited Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the damaged portions of the Common Area or Limited Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area or Limited Common Area by the Association in a neat and attractive condition.

Section 4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members, levy a Special Assessment against all Owners in proportion to the number of Residential Units owned by such Owners; if

the damage or destruction is of Limited Common Area, the Board, in its discretion, may levy the Special Assessment only against the Owners of Units to which said Limited Common Area is allocated. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. In any fiscal year, the Board may not, without the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant, levy such Special Assessments which in the aggregate exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year.

Article VI No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or Limited Common Areas or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 3 of Article V in the case of damage or destruction, or unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Article VII Condemnation

Whenever all or any part of the Common Area or Limited Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of all Owners) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to participate in the proceedings incident thereto, unless otherwise prohibited by law. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five percent (75%) of the total eligible vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net

funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

(b) If the taking involves a portion of the Limited Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five percent (75%) of the total eligible vote of the Owners of Units to which said Limited Common Area is allocated shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in such Limited Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Limited Common Area so affected, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE VIII
Annexation of Additional Property and
Further Development of Properties

Section 1. Annexation Without approval of Class "A" Membership. As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time until five (5) years from the anniversary of the filing of this Declaration, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B", attached hereto and by reference made a part hereof, whether in fee simple or leasehold, by filing in the Davidson County, Tennessee Register's Office, an amendment annexing such Properties. Such amendment to this Declaration shall not require the vote of Members. Any such annexation shall be effective upon the filing for record of such amendment unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the said right, privilege, and option to annex additional property which is herein reserved to Declarant.

Section 2. Annexation With Approval of Class "A" Membership. Subject to the consent of the owner thereof, the Association may annex real property other than that shown on Exhibit "B", and, following the expiration of the right in Section 1, the properties shown on Exhibit "B", upon the written consent or affirmative vote of the following: (a) a majority of the Class "A" Members of the

Association, other than Declarant; and (b) Declarant, so long as it owns property subject to this Declaration or which may become subject in accordance with Section 1 of this Article. Such annexation shall be evidenced by the filing for record in the Davidson County, Tennessee Register's Office of a Subsequent Amendment in respect to the Properties being annexed. Any such Subsequent Amendment shall be signed by the President and the Secretary of the Association, and the owner of the real estate being annexed, and any such annexation shall be effective upon filing, unless otherwise provided therein. The time within which and the manner in which notice of any such meeting of the Class "A" Members of the Association, called for the purpose of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-Laws of the Association for regular or special meetings, as the case may be.

Section 3. Acquisition of Additional Common Area. Declarant may convey additional real estate, improved or unimproved, located within the Properties described in Exhibit "B" which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its members.

Section 4. Amendment. This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B".

Article IX Rights and Obligations of the Association

In addition to the powers delegated to it by the Charter, the Association shall have the obligation to perform each of the following duties:

Section 1. Operation and Maintenance of Common Area and Limited Common Areas. To operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of the Common Area and Limited Common Areas, together with all easements for operation and maintenance purposes and for the benefit of the Association or its Members over and within the Common Area and Limited Common Areas; to keep all improvements, if any, of whatever purpose from time to time located thereon in good order, condition, and repair. Any other provision of this Declaration, the Articles, or the By-Laws notwithstanding, the Association always shall maintain lien-free title to the Common Area and Limited Common Areas, excepting only the lien of current taxes not yet due and payable.

Section 2. Additional Maintenance Obligations. In addition to the operation, maintenance, and management duties of the Association set forth in Section 1 above, the Association shall have the right to contract with the Owner of a Residential Unit for the cutting

walks, decks, balconies, patios, driveways, and landscaping; for painting any exterior portion of the Unit; for repairing roof covers; for painting, maintenance, and nonstructural repair of other exterior building surfaces as the Board shall deem necessary and proper, including gutters, downspouts, replacement of trim, caulking and other repairs to roof covers (to include the repair and replacement of all non-structural components of the roof of each Residential Unit), and other miscellaneous repairs of a nonstructural nature. Such maintenance, repair and replacement shall be performed at the option of and under the supervision of the Board subject to such rules, procedures, methods, and compensation as the Board and affected Owners individually may agree; provided, however, that this provision shall not be construed to establish the Board as a principal or employer of any person engaged as an independent contractor to perform such services, and the Board shall be held harmless in connection with any damages caused by or resulting from such maintenance, repairs, or replacements by third parties, except for damages caused by its own negligence or willful misconduct.

In addition to the foregoing, if the need for exterior maintenance and repair by the Association of all or a portion or element of the Common Area, Limited Common Areas, or a portion of a Unit which the Board is permitted or required to maintain pursuant to the preceding paragraph is caused by the willful or negligent conduct or act, or by the failure to act, of an Owner, his family, guests, invitees, or other Persons using or occupying his Residential Unit with his express or implied permission, after notice to such Owner and request for such repair and the failure of such person to make such repair within thirty (30) days of such notice, the Association may make such repair and perform such maintenance, and the cost of such repair or maintenance shall be assessed against such Owner and shall be due and payable thirty (30) days from the date of the request for such payment, such Assessment to be collected and enforced as provided in Article X of this Declaration. Such Assessment shall not require the approval of any of the Members; provided, however, that any Owner against whom any such assessment is levied shall be entitled to notice, a hearing, and an opportunity to do the corrective work required, as provided by Section 3 of Article XII hereof, prior to any Assessment being levied against such Owner in accordance with the provisions of this paragraph. For the sole purpose of performing the exterior maintenance upon each Residential Unit required by this Section 2, the duly authorized employees or agents of the Association, and independent contractors engaged by the Association, shall have the right, after reasonable notice to the Owner, to enter upon or into any Residential Unit at reasonable hours of any day except Sunday.

(b) The duly authorized agents or employees of the Association, and independent contractors engaged by the Association, shall have the right to enter in or upon any Residential Unit or into any structure thereon, without notice to the Owner thereof, when, in the

judgment of the Association, such entrance is necessary to prevent damage to such Residential Unit or surrounding Residential Units by fire, criminal act, natural disaster, or other similar emergency.

Section 3. Water and Other Utilities. To acquire, provide, and/or pay for, water, sewerage, garbage disposal, electrical, telephone, gas, and other necessary utility services for the Common Area and Limited Common Areas and all utility services necessary to enable the Association to maintain the Additional Maintenance Areas as provided in Section 2 of this Article IX.

Section 4. Taxes and Assessments. To pay all real and personal property taxes and assessments separately levied upon or assessed against the Association and/or the property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond in an amount at least equal to such taxes and assessments is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes or assessments.

Section 5. Insurance. To obtain from reputable insurance companies qualified to do business in the State of Tennessee, with a financial rating by Best's Insurance Reports of BBB+ or better, and maintain in force at all times such insurance as is required by this Declaration.

Section 6. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within Davidson County conveyed to it by the Declarant as permitted herein.

Section 7. Rules and Regulations. The Association, through its Board of Directors or otherwise, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use the Common Area. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws. In addition, the Association, through the Board or otherwise, may, by contract or other agreement, enforce county ordinances or permit Davidson County to enforce ordinances on the Properties for the benefit of the Association and its members.

Section 8. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be

implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Article X
Assessments

Section 1. Creation of Assessments. There are hereby created Assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors. The Annual Assessment shall be allocated equally among all Residential Units owned by Persons other than Declarant and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Assessments with respect to Units owned by Declarant shall be based solely on expenses such as taxes and insurance which are attributable to such Units and shall exclude other expenses which do not benefit such Units. Special Assessments may be levied against all Residential Units or Residential Units in particular portions of the Properties when the Special Assessments benefit less than the Association as a whole. Each Owner, by acceptance of his or her deed, is deemed to covenant and agree to pay these assessments. All such assessments, together with interest at the highest rate allowable under the laws of Tennessee from time to time relating to usury for residential real estate loans (or if no such rate is established, sixteen percent (16%) per annum), costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Residential Unit against which each assessment is made.

Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Residential Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Residential Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the Annual Assessment for delinquents; unless the Board otherwise provides, the assessments shall be paid in monthly installments.

The Association is specifically authorized and encouraged to seek public and private funds to help defray, in whole or in part, the expenses for which assessments would be necessary. To the extent received, such funds shall be used to reduce the assessments otherwise required by the budget in Section 2. The Association is specifically authorized to enter into subsidy contracts with Declarant or other entities for the payment of some portion of the Common Expenses. Such contract or contracts shall be for the benefit of and enforceable by the Association and its members.

Section 2. Computation of Annual Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Residential Unit for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the Assessments shall become effective unless disapproved at the meeting by a vote of at least a majority of both classes of the total Association membership.

Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 3. Special Assessments. In addition to the Annual Assessments authorized above, the Board may levy, during any calendar year, but in no event prior to the first annual meeting of the Members, Special Assessments, applicable only to that year, to be used solely to defray, in whole or in part, the cost of any construction, reconstruction, or unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto; provided, however that any Special Assessment shall be approved by vote or written consent of (a) fifty-one percent (51%) of each class of members in the Association present and voting, either in person or by proxy, and entitled to vote at a meeting of the members of the Association called for such purpose at which a quorum is present; and (b) fifty-one percent (51%) of the Unit Owners directly affected or benefited by the Special Assessment, in the opinion of the Board, if less than all of the Owners are benefited.

Section 4. Lien for Assessments. To secure the payment of any Assessment, a lien is expressly retained in favor of the Association on each and every Residential Unit. Such lien shall be prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

For the purpose of rendering unnecessary court proceedings for the enforcement of said lien in the event of the nonpayment of Assessments, and for the consideration of one dollar paid in cash, receipt of which is acknowledged, the Owners, their heirs, successors, administrators, and assigns, hereinafter referred to as Trustors,

Dearborn & Ewing
1200 One Commerce Place
Nashville, TN 37239

FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS FIRST AMENDMENT to Declaration of Covenants, Conditions, and Restrictions is made this 19th day of February, 1986 by Homes by Heritage, Inc., a Tennessee corporation (hereinafter referred to as "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant has previously recorded a Declaration of Covenants, Conditions, and Restrictions dated November 1, 1985, with respect to a development referred to therein as Heritage Heights, which Declaration is of record at Book 6730, page 329, Register's Office for Davidson County, Tennessee; and

WHEREAS, Declarant desires to change the name of said development from Heritage Heights to Hemmingwood; and

WHEREAS, Declarant further desires to amend the Plat of Heritage Heights, of record in Book 6200, page 353, and Book 6250, pages 743 through 745, inclusive, said Register's Office, so as to show the change in name from Heritage Heights to Hemmingwood,

NOW, THEREFORE, in accordance with Article XIII, Section 2 of said Declaration, Declarant hereby amends said Declaration as follows:

1. The name of the development known as Heritage Heights shall hereinafter be Hemmingwood. The name "Hemmingwood" shall be substituted in all places in the Declaration for "Heritage Heights", and the name of the Association in the Declaration shall hereinafter be "Hemmingwood Home Owners Association, Inc." in lieu of "Heritage Heights Home Owners Association, Inc."

2. All references in the Declaration to the Plat shall include the Plat as amended and re-recorded in Book 6900, page 6, and Book 6900, pages 7 through 8, inclusive, said Register's Office.

23409

IDENTIFICATION

JUL 22 3 49 PM '86

FELIX Z. WILSON II REGISTER
DAVIDSON COUNTY, TN

THIS INSTRUMENT PREPARED BY:
 Dearborn & Ewing
 1200 One Commerce Place
 Nashville, TN 37239

FIRST AMENDMENT TO
 DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS FIRST AMENDMENT to Declaration of Covenants, Conditions, and Restrictions is made this 19th day of June, 1986 by Homes by Heritage, Inc., a Tennessee corporation (hereinafter referred to as "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant has previously recorded a Declaration of Covenants, Conditions, and Restrictions dated November 1, 1985, (the "Declaration") with respect to a development referred to therein as Heritage Heights, which Declaration is of record at Book 6730, page 329, Register's Office for Davidson County, Tennessee; and

WHEREAS, Declarant desires to amend the members' voting rights and the provisions regarding termination of Class "B" membership and conversion to Class "A" membership as set forth in the Declaration; and

WHEREAS, the Declarant is presently the sole Member of Heritage Heights Home Owners Association, Inc., and the sole Unit Owner at Heritage Heights,

NOW, THEREFORE, in accordance with Article XIII, Section 2 of said Declaration, Declarant hereby amends said Declaration as follows:

1. Article III, Section 2(b) shall be amended by deleting said subsection in its entirety and inserting in lieu thereof the following:

IDENTIFICATION
 JUN 19 3 35 PM '86
 CLERK OF THE COURT
 DAVIDSON COUNTY, TN

12437

(b) Class "B". Class "B" Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant or its successor. The Class "B" Members shall originally be entitled to three (3) votes for each Residential Unit owned. The Class "B" membership shall terminate and become converted to Class "A" membership upon the happening of the earlier of the following:

- (i) four (4) months after seventy-five percent (75%) of the Units have been conveyed to Owners other than Declarant;
- (ii) the 30th day of June, 1991;
- (iii) when, in its discretion, the Declarant so determines.

From and after the happening of these events, whichever occurs earliest, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each Residential Unit in which it holds the interest required for membership under Section 1 hereof. At such time, the Declarant shall call a meeting, as provided in the By-Laws for special meetings, to advise the membership of the termination of Class "B" status. Declarant shall also be a Class "B" Member with respect to Residential Units it owns which are annexed by Subsequent Amendment until such time as such membership is converted to Class "A" membership as set forth above.

IN WITNESS WHEREOF, the undersigned has executed this instrument on the date first above set forth, effective upon recording in the Register's Office for Davidson County, Tennessee.

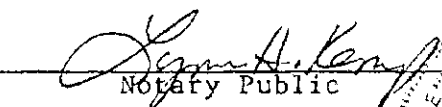
HOMES BY HERITAGE, INC.

BY: *Edgar Chan*
 TITLE: *President*

STATE OF TENNESSEE)
COUNTY OF Williamson

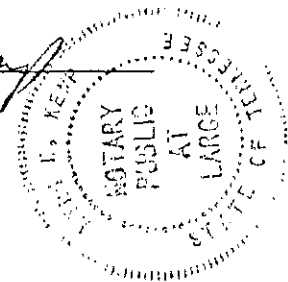
Before me, Lynn H. Kemp, of the State and County
aforesaid, personally appeared Edsel Charles, with
whom I am personally acquainted, and who, upon oath, acknowledged
himself to be President of Homes by Heritage, Inc.,
the within named bargainer, a corporation, and that he as such
President, being authorized so to do, executed the
foregoing instrument for the purpose therein contained, by signing
the name of the corporation by himself as President.

Witness my hand and seal, at office in Brentwood,
Tennessee, this 19th day of June, 1986.


Notary Public

My Commission Expires:

July 9, 1989



INSTRUMENT OF CORRECTION

HEMMINGWOOD

This Instrument of Correction entered into this 11th day of August, 1986, by Homes by Heritage, Inc., a Tennessee corporation (hereinafter referred to as "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant has previously recorded a Declaration of Covenants, Conditions, and Restrictions, dated November 1, 1985 (the "Declaration") with respect to a development referred to therein as Heritage Heights, which Declaration is of record at Book 6730, page 329, Register's Office for Davidson County, Tennessee; and

WHEREAS, Declarant has amended said Declaration by an Instrument of Record in Book 6892, page 540, said Register's Office, said Instrument being captioned "First Amendment to Declaration of Covenants, Conditions, and Restrictions"; and

WHEREAS, Declarant thereafter further amended said Declaration by Instrument of record in Book 6925, page 268, said Register's Office, said Instrument being likewise, and erroneously, titled "First Amendment to Declaration of Covenants, Conditions, and Restrictions"; and

WHEREAS, the Instrument referred to in the preceding paragraph, of record in Book 6925, page 268, should have been titled "Second Amendment to Declaration of Covenants, Conditions, and Restrictions",

NOW, THEREFORE, Declarant hereby corrects said error and hereby amends and corrects that instrument referred to erroneously as the "First Amendment to Declaration of Covenants, Conditions, and Restrictions" recorded July 22, 1986 in Book 6925, page 268, said Register's Office, by changing the title thereof to "Second Amendment to Declaration of Covenants, Conditions, and Restrictions", and by deleting all references to "first amendment" and inserting in lieu thereof "second amendment."

In all other respects, said Amendment, and the Declaration to which it refers, shall remain in full force and effect, except as they may have been, or may in the future be, modified or amended.

HOMES BY HERITAGE, INC.

BY:

TITLE:

31313
STATE OF TENNESSEE)
COUNTY OF Williamson
13 11 24 AM '86
DAVIDSON COUNTY, IN

Before me, Signer H. Kemp of the State and County aforesaid, personally appeared Edell Charles, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be President of Homes by Heritage, Inc., the within named bargainor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as President.

Witness my hand and seal, at office in Centerville, Tennessee, this 11th day of August, 1986.

Signer H. Kemp
NOTARY PUBLIC

My Commission Expires: 7-9-89

THIRD AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

(HEMMINGWOOD)

This Amendment to Declaration of Covenants, Conditions, and Restrictions is made this 27th day of February, 1987, by Homes by Heritage, Inc., a Tennessee corporation (hereinafter referred to as "Declarant"),

W I T N E S S E T H:

WHEREAS, Declarant has previously filed for record a Declaration of Covenants, Conditions, and Restrictions, dated November 1, 1985, and recorded on December 9, 1985, in Book 6730, page 329, Register's Office for Davidson County, Tennessee (the "Declaration") with respect to a development referred to therein as Heritage Heights; and

WHEREAS, said Declaration was amended by an amendment entitled First Amendment to Declaration of Covenants, Conditions, and Restrictions dated June 19, 1986, of record in Book 6892, page 540, said Register's Office; and

WHEREAS, said Declaration was further amended by an amendment changing the name of the development from "Heritage Heights" to "Hemmingwood", said amendment being erroneously entitled First Amendment to Declaration of Covenants, Conditions, and Restrictions, dated February 19, 1986, of record in Book 6925, page 268, said Register's Office, the title of said amendment being subsequently corrected to be Second Amendment to Declaration of Covenants, Conditions, and Restrictions by Instrument of Correction dated August 11, 1986, of record in Book 6948, page 268, said Register's Office; and

WHEREAS, Article VIII, Section 1 of the Declaration provides that the Declarant shall have the unilateral right at any time within five (5) years from the date the Declaration is recorded to subject to the provisions of the Declaration all or any portion of the property described in Exhibit "B" of the Declaration; and

WHEREAS, Declarant desires to submit and subject additional property to the provisions of the Declaration as hereinafter set forth, said property being that property referred to hereinafter

as "Phase IV" of Hemmingwood, being the same property as that property described in Exhibit "B" to the Declaration; and

WHEREAS, a Plat of Phase IV is of record in Book 6900, page 335, said Register's Office.

NOW, THEREFORE, in consideration of the foregoing premises, the aforementioned Declaration is hereby amended to include as part of the "Properties", as defined in the Declaration, Phase IV of Hemmingwood. Phase IV, including the Residential Units, Common Area, and other matters thereon and in connection therewith, shall hereinafter comprise a part of Hemmingwood and shall be subject to, and governed by, the terms and conditions of the Declaration. This Third Amendment shall be effective upon filing.

IN WITNESS WHEREOF, this instrument has been executed on the day and date first above sets forth.

HOMES BY HERITAGE, INC.

BY:

TITLE:

STATE OF TENNESSEE
COUNTY OF Williamson

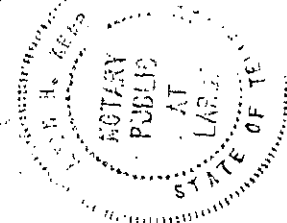
Before me, James H. Kemp, a Notary Public in and for the County and State aforesaid, personally appeared Charles, with whom I am personally acquainted, and who upon oath acknowledged himself to be President of Homes by Heritage, Inc., the within named bargainor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

Witness my hand and seal at office in Greentown, Tennessee, this the 27th day of February, 1987.

James H. Kemp
NOTARY PUBLIC

My Commission Expires:

7-9-89



BOOK 7474 PAGE 205 *File 6*

THIS INSTRUMENT PREPARED BY:

Dearborn & Ewing

1200 One Commerce Place
Nashville, Tennessee 37239

6.00

FOURTH AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

(HEMMINGWOOD)

This Amendment to Declaration of Covenants, Conditions, and Restrictions is made this 19th day of February, 1988, by Homes by Heritage, Inc., a Tennessee corporation (hereinafter referred to as "Declarant"),

W I T N E S S E T H:

WHEREAS, Declarant has previously filed for record a Declaration of Covenants, Conditions, and Restrictions, dated November 1, 1985, and recorded on December 9, 1985, in Book 6730, page 329, Register's Office for Davidson County, Tennessee (the "Declaration") with respect to a development referred to therein as Heritage Heights and subsequently renamed Hemmingwood; and

WHEREAS, said Declaration was amended by amendments of record in Book 6892, page 540 and Book 6925, page 268, and an Instrument of Correction was also recorded in Book 6948, page 268, said Register's Office; and

WHEREAS, pursuant to Article VIII, Section 1 of the Declaration, additional property was added to the Hemmingwood development and made subject to the Declaration pursuant to a Third Amendment of record in Book 7269, page 387, said property being referred to as "Phase IV" of Hemmingwood, the Plat of Phase IV being of record in Plat Book 6900, page 335; and

WHEREAS, Declarant desires to amend and modify the Plat of Phase IV of Hemmingwood; and

WHEREAS, Declarant is the owner of all of the real property and Residential Units shown on the Plat of Phase IV and also possesses in excess of sixty-seven percent (67%) of the total voting power of the Association and, as such, is authorized to make, and does hereby consent to, this amendment,

NOW, THEREFORE, in consideration of the foregoing premises, the aforementioned Plat of Phase IV of Hemmingwood, as recorded in Plat Book 6900, page 335, said Register's Office, shall be modified and superseded by that new Plat of Phase IV, of record

in Plat Book 6900, page 374 said Register's Office (the "Revised Plat of Phase IV"). The Residential Units and other matters in connection with Phase IV shall be as set forth on the Revised Plat of Phase IV, and said Phase IV shall be subject to and governed by the terms and conditions of the Declaration. This Fourth Amendment shall be effective upon filing.

IN WITNESS WHEREOF, this instrument has been executed on the day and date first above set forth.

HOMES BY HERITAGE, INC.

BY: Edsel Charles
TITLE: President

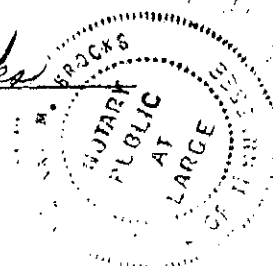
STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, Donna M. Brooks, a Notary Public in and for the County and State aforesaid, personally appeared Edsel Charles, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who upon oath acknowledged himself to be President of Homes By Heritage Inc., the within named bargainor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

Witness my hand and seal, at office in Nashville, Tennessee, this the 19th day of February, 1988.

Donna M. Brooks
NOTARY PUBLIC

My Commission Expires: May 8, 1991



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IDENTIFICATION

FEB 22 3 52 PM '88

DAVIDSON COUNTY, TN

BILL GARRETT, Davidson County

Trans: T20130051757 DEEDMAST

Recvd: 06/19/13 13:35 16 pgs

Fees: 82.00 Taxes: 0.00



20130619-0062819

**FIFTH AMENDED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
OF
HEMMINGWOOD HOME OWNERS ASSOCIATION, INC.**

This Declaration of Covenants, Conditions and Restrictions is made this the 31st day of December 2005 by Hemmingwood Home Owners Association, Inc., a Tennessee Corporation (hereinafter referred to as "Declarant.")

WITNESSETH:

WHEREAS, there have been recorded certain Restrictive Covenants of record in Book 6730, Page 329 thru 361, Register's Office for Davidson County, Tennessee; First Amendment in Book 6892, Pages 540, 541, 542; Second Amendment in Book 6925, page 268, 269; Third Amendment in Book 7269, page 387; and Fourth Amendment in Book 7474, page 205 and 206; and a Declaration of Covenants, Conditions and Restrictions in Book 8762, Pages 173 through 185; said Declarant desires hereby to amend and supersede in their entirety and in all respects the aforesaid Covenants, Conditions and Restrictions by recording this Declaration.

WHEREAS, Declarant and its members are the Owners of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties as hereafter defined, mutually beneficial restrictions for the benefit of all Owners of residential properties within Hemmingwood. Declarant has established a method for the administration, maintenance, preservation, use and enjoyment of such Properties as is now or may hereafter be submitted to this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the Properties described in Exhibit "A" and any additional property as may by Subsequent Amendment be added to the Properties and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. Such easements, restrictions, covenants and conditions are for the purpose of protecting the value and desirability of the Properties, and shall run with the real property submitted to this Declaration. They shall be binding on all parties having any right, title, or interest in the

described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

Section 1. "Assessment" shall mean Assessments for Common Expenses provided for herein or by any Subsequent Amendment, which shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Residences and of maintaining the Properties, all as may be specifically authorized by the Board of Directors and as more specifically authorized below:

Assessment shall be levied equally against owners or residences as are authorized by this declaration or by the Board of Directors.

There shall be an Annual Assessment, which shall mean the amount assessed yearly against each Owner as established by the Board. There may be special assessments for construction, reconstruction, repair or replacement of capital improvements to be established, collected and used as provided herein.

Section 2. "Common Area" shall mean all real and personal property, including the Properties, but excluding Residences and components thereof and easements appurtenant thereto, now or hereafter owned by the Association for the common use and enjoyment of the Owners, including but not limited to, any and all streets, roads, bridges, parking areas, lakes, waterways, fences, structures, sidewalks, curbs, tennis courts, signs, lights, common utilities, and other improvements.

Section 3. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association and maintaining the Common Area, including reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the ByLaws, and the Articles of Incorporation of the Association.

Section 4. "Easement Areas" shall mean those portions of the Properties designated on the plat as Easement Area.

Section 5. "Member" (Home Owner) shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

Section 6. "Owner" shall mean and refer to one or more Persons or entities who hold the record title to any Residence which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Residence is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the Owner. For the purpose of this Declaration, the Owner of a Residence which is under lease shall be as follows: for the purpose of votes and assessments, the record Owner of the Residence; for the purpose of use and enjoyment of common facilities and amenities which are part of the Common Area, the tenant residing in the Residence. The Board of Directors may promulgate reasonable regulations

conditioning such use upon registration of the names of tenants with the Association.

Section 7. "Person" shall mean a natural person, a corporation, a partnership, trustee, or other legal entity.

Section 8. "Plat" shall mean the recorded plans of the properties which are recorded in Book 6200, page 353; Book 6250, pages 743 through 745 inclusive; Book 6900, page 574 and Book 6900, pages 5, 6, and 7; Register's Office for Davidson County, Tennessee.

Section 9. "Properties" shall mean and refer to the real property described in Exhibit " A" attached hereto and shall further refer to such additional property as may hereafter be annexed by subsequent amendment to this Declaration.

Section 10. "Residence" shall mean a portion of the Properties intended for any type of independent ownership for use and occupancy as a Residence by a single family, whether a residence is constructed thereon or not. All Residences shall be shown and identified as numbered lots or units upon the Plat. A Residence shall include those easement areas contiguous and appurtenant to such residence.

ARTICLE II

Property Rights

Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to any restrictions or limitations contained in this Declaration or in any Deed or amendment thereto conveying to the Association or subjecting to this Declaration such property. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and social invitees subject to reasonable regulation by the Board and in accordance with procedures it may adopt.

ARTICLE III

Membership and Voting Rights

Section 1. "Membership." Every Person who is the record Owner of a fee or undivided fee interest in any Residence that is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from such ownership, and any transfer of a Residence shall operate automatically to transfer to the new record Owner thereof the membership in the Association appurtenant thereto. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Residence. In the event the Owner of a Residence is more than one Person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or a Member's spouse, but in no event shall more than one (1) vote be cast for each Residence.

Section 2. "Voting." Members shall be entitled on all issues to one (1) vote for each Residence in which they hold the interest required for membership by Section 1 hereof;

Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 3. "Special Assessments." In addition to the Annual Assessments authorized above, the Board may levy, during any calendar year, Special Assessments, applicable only to that year, to be used solely to defray, in whole or in part, the cost of any construction, reconstruction, or unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto; provided, however, that any Special Assessment shall be approved by vote or written consent of (a) fifty-one percent (51%) of members in the Association present and voting, either in person or by proxy, and entitled to vote at a meeting of the members of the Association called for such purpose at which a quorum is present; and (b) fifty-one percent (51%) of the Residence Owners directly affected or benefited by the special Assessment, in the opinion of the Board, if less than all of the Owners are benefited.

Section 4. "Lien for Assessments." To secure the payment of any Assessment, a lien is expressly retained in favor of the Association on each and every Residence. Such lien shall be prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

For the purpose of rendering unnecessary court proceedings for the enforcement of said lien in the event of the nonpayment of Assessments, and for the consideration of one dollar paid in cash, receipt of which is acknowledged, the Owners, their heirs, successors, administrators, and assigns, hereinafter referred to as Tractors, hereby transfer and convey unto Joe Vaulx Crockett, III, Trustee, his successors and assigns, their respective Residences with the appurtenances, estate, title and interest thereto belonging upon the use and trusts set forth in this paragraph.

If each Trustor shall pay his Assessments when due, then this trust conveyance shall be of no further force or effect with respect to such Trustor's Residence. If the Assessments with respect to any Residence are not paid promptly when due, this trust conveyance shall remain in full force and effect, and the said Trustee, or his successor in trust, is hereby authorized and empowered upon giving twenty (20) days notice by three publications in any newspaper, daily or weekly, published in Davidson County, Tennessee to sell said Residence at the front door of the Court House in said County to the highest bidder for cash, at public outcry, free from all statutory, equitable and other rights of redemption, homestead, dower and all exemptions of every kind, which are hereby expressly waived; and the said Trustee, or his successor in trust, is authorized and empowered to execute and deliver a deed to the purchaser. The Association may bid at any sale under this trust conveyance. The Association may, at any time after default in the payment of any Assessment, enter and take possession of said property, and shall only account for the net rents actually received by it. It is further agreed that, in the event the Association fails, before instructing Trustee to sell said Residence, as herein provided, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to him by the Trustee of a deed for said property. In the case of sale hereunder, the proceeds will be applied by the Trustee as follows:

(1) First, the payment of all costs, charges and expenses of executing this conveyance and

there shall be only one (1) vote per Residence. When more than one Person holds such interest in any Residence, the vote for such shall be exercised as those Persons themselves determine and advise the Secretary of the Association prior to any meeting according to the procedures and other requirements set forth in the By-Laws. In the absence of such advice, the Residence's vote shall be suspended in the event more than one Person seeks to exercise it. Any Owner of a Residence which is leased, may, in the lease or other written instrument, assign the voting right appurtenant to that Residence to the lessee, providing that a copy of such instrument is furnished to the Secretary prior to any meeting.

ARTICLE IV

Maintenance

Section 1. "Association's Responsibility." The Association shall maintain and keep in good repair the Common Area, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures and improvements situated upon the Common Area.

Section 2. "Owner's Responsibility." In accordance with this declaration, Residence Owners are solely responsible for all maintenance and upkeep of the Residence and the land therewith, including, but not limited to, interior and exterior of Residence, flora and landscaping, yard, fences, decks, patios, driveways, walks, etc. Said maintenance and upkeep shall be consistent with Hemmingwood standard, the applicable covenants set forth herein, and such rules and regulations as may be established by the Board of Directors.

ARTICLE V

Insurance and Casualty Losses

Section 1. "Insurance." The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard.

The Board shall also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000) limit per occurrence, and Five Hundred Thousand Dollar (\$500,000) minimum property damage limit.

Premiums for all insurance as required by this Article V shall be Common Expenses of the Association. The policy or policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. Cost of insurance coverage shall be included in the Annual Assessment, as defined in Article I, Section 1, and Article VIII,

Section 1.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefited parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Tennessee and holding a rating of BBB+ or better in the Financial Category as established by A M Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All insurance policies shall be for the benefit of the Residence Owners and their Mortgagees as their interests may appear.

(c) Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

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

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, the Owners, and their respective tenants, servants, agents and guests;

(ii) a waiver by the insurer of its rights to repair, and reconstruct, instead of paying cash;

(iii) that no policy may be canceled, invalidated or suspended on account of anyone or more individual Owners;

(iv) that no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized agent without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner, or mortgagee;

(v) that any other insurance clause in any policy exclude individual Owner's policies from consideration; and

(vi) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, workman's compensation insurance, if and to a extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or

responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three (3) months' Assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

Section 2. "Disbursement of Proceeds." Proceeds of insurance policies shall be disbursed as follows: If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area, shall be retained by the Association and placed in a capital improvements account. This is a Covenant for the benefit of any mortgagee of a Residence and may be enforced by such mortgagee.

Section 3. "Damage and Destruction."

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with a filing and adjustment of all claims arising under, such insurance and obtain reliable and detailed estimates of the costs of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which it existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the total eligible vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and, detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the damaged portions of the Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

Section 4. "Repair and Construction." If the damage or destruction for which the insurance proceeds are paid to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members, levy a special assessment against all Owners of Residences. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. In any fiscal year, the Board may not, without the vote or written assent of a majority of the voting power of the Association levy such special assessments which in the aggregate exceed ten percent (10%) of the budgeted

gross expenses of the Association for that fiscal year.

ARTICLE VI

No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any such judicial partition. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE VII

Rights and Obligations of the Association

In addition to the powers delegated to it by the Charter, the Association shall have the obligation to perform each of the following duties:

Section 1. "Operation and Maintenance of Common Area." To operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of the Common Area, together with all easements for operation and maintenance purposes and for the benefit of the Association or its Members over and within the Common Area; to keep all improvements, if any, of whatever purpose located thereon in good order, condition, and repair. Any other provision of this Declaration, the Articles, or the By-Laws notwithstanding, the Association always shall maintain lien free title to the Common Area. Portions of the Properties designated on the Plat as Common Area A and Common Area C, were at one time used as a cemetery. Therefore no structure or Development shall be placed upon these areas.

Section 2. "Water and Other Utilities." To acquire, provide and/or pay for water, electric and any other necessary utility services for the Common Area.

Section 3. "Insurance." To obtain from reputable insurance companies qualified to do business in the state of Tennessee, with a financial rating by Best's Insurance Reports of BBB+ or better, and maintain in force at all times such insurance as is required by this Declaration.

Section 4. "Personal Property and Real Property for Common Use." The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property. However, real property may be acquired, but never be disposed of by the Board.

Section 5. "Rules and Regulations." The Association, through its Board of Directors or otherwise, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use the Common Area. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances.

Imposition of sanctions shall be as provided in the By-Laws.

Section 6. "Implied Rights." The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably implied.

ARTICLE VIII

Assessments

Section 1. "Creation of Assessments." There are hereby created Assessments for Common Expenses as may be specifically authorized by the Board of Directors. The Annual Assessment shall be allocated equally among all Residences and shall be for expenses determined by the Board to be for the benefit of the Association as a whole.

Special Assessments may be levied against all Residences. Each Owner, by acceptance of his or her deed, is deemed to covenant and agree to pay these assessments. All such assessments, together with interest, costs, and reasonable attorney's fees related thereto, shall be a charge' on the land and shall be a continuing lien upon the Residence against which each assessment is made.

Each such assessment, together with interest, costs, and reasonable attorney's fees related thereto, shall also be the personal obligation of the Person who was the Owner of the Residence at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance except no first Mortgagee who obtains title to a Residence pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which occurred prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the Annual Assessment for delinquents; unless the Board otherwise provides, the assessments shall be paid in monthly installments.

The Association is specifically authorized and encouraged to seek public and private funds to help defray, in whole or in part, the expenses for which assessments would be necessary. To the extent received, such funds shall be used to reduce the assessments otherwise required by the budget in Section 2. The Association is specifically authorized to enter into subsidy contracts for the payment of some portion of the Common Expenses. Such contract or contracts shall be for the benefit of and enforceable by the Association and its members.

Section 2. "Computation of Annual Assessment." It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Residence for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the Assessments shall become effective unless disapproved at the meeting by a vote of at least a majority of the membership.

enforcing said lien as herein provided, including reasonable attorneys' fees and expenses incurred for instituting or defending any litigation which may arise on account of the execution of this conveyance, or the enforcement of said lien;

(2) Second, to the payment of all taxes which may be unpaid with respect to such Residence;

(3) Third, to the payment of all unpaid Assessments with respect to such Residence;

(4) Fourth, the residue, if any, will be paid to the Owner of such Residence, his order, representatives or assigns.

In the case of the death, absence, inability, or refusal to act of said Trustee at any time when action under the foregoing power and trusts may be required or for any other reason, the Association is hereby authorized and empowered to name and appoint a successor to the Trustee by an instrument in writing to be recorded in the Register's Office for Davidson County, Tennessee, and the title herein conveyed to the above named Trustee shall be vested in said successor.

Section 5. "Capital Budget and Contribution." As noted in Article VIII, Section 2, above, the Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget with respect both to amount and timing by Annual Assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment, as provided in Section 2 of this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

ARTICLE IX

Architectural Standards

Section 1. Without the prior written approval of the Association acting through the Board of Directors, no Person shall make any modifications, additions or alterations to his Residence or any structure thereon or improvement thereto. The foregoing shall include but not be limited to, the erection of fences, retaining walls or any other walls, mailboxes, driveways, basketball goals, play houses, awnings; ornamental screens, screen doors, sunshades, hedges, patios, porches, or any temporary or permanent structure. Plans and specification both in duplicate, showing the nature, kind, shape, color, size, materials, and location of such modifications, additions or alterations shall be submitted to the Board of Directors for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. Any temporary facility of any kind must have Board approval prior to placement. No permission or approval shall be required to repaint in the same color. The right of an Owner to remodel and paint the interior of his or her residence is exempt from the conditions and limitation of this Article. In the event the Board fails to approve or disapprove such plans or to request additional information reasonably required within thirty (30) days after submission, the plans shall be deemed approved.

Section 2. The Board of Directors and its committee if so designated, in exercising its authority under this Article shall promulgate detailed standards and procedures in implementing the requirements of this Article. The Board of Directors and any committee it may designate may not discriminate between Owners, and upon a written request for a hearing submitted to the Board, an aggrieved Owner shall have the right to a hearing before the Board in accordance with the applicable procedures set forth in Article X. Section 3. The Board shall have the standing and authority to enforce in courts of competent jurisdiction its decisions in connection with this Article. The costs, including attorneys fees, of any successful action to enforce a decision of the Board under this Article, shall be assessed to the Owner and collected by the Board in accordance with Article VIII.

ARTICLE X

Use Restrictions

Section 1. In addition to all other covenants contained herein, the use of the Properties is subject to the following:

(a) Residential Use. Each Residence shall be used as a single-family residence and for no other purposes.

(b) Exterior Maintenance. Each Owner shall (1) keep his Residence free from rubbish, litter and noxious weeds; 2) maintain, cultivate, and keep in good condition and repair shrubs, trees, grass, lawns, plantings, and other landscaping located or placed within the bounds of his Residence; and (3) replace dead plants, shrubs, trees, grass or landscaping of the same or similar type. All fences and other approved outdoor structures must be properly maintained. All houses must be kept in good repair at all times and painted as needed. If not properly maintained, the Board of Directors has the right to have the work done at the Owner's Expense.

(c) Signs and Billboards. No signs or billboards of any kind shall be displayed to the public view of any Residence, Residence lawn or Common Areas. The only exceptions are "Real Estate Sale" signs and security signs.

(d) Quiet Enjoyment. No noxious, offensive, or illegal activity shall be carried on, in or upon any Residence or any part of the Properties, nor shall anything be done thereon that may be or may become an annoyance or nuisance to the neighborhood, that shall interfere in any way with each Owner's quiet enjoyment of his respective Residence, or that shall increase the rate of insurance in any way.

(e) Animals. Each animal owner shall be liable to all other Residence owners, their families, guests, tenants, and to the Association for any annoyance, nuisance or all damage to person or property caused by any pets brought or kept in or upon any Residence or on the common areas. The Board shall determine if any animal is a nuisance, an annoyance or obnoxious and should therefore be removed from the Properties. When animals are not on a resident's property, they must be on a leash. Animal waste is to be removed by the animal's owner at the time the waste occurs.

(f) Garage. Detached garages or carports are not permitted. Every garage door shall be equipped with a remote-controlled garage door opener and it should be closed except for entry/exit purposes, lawn maintenance and washing or cleaning vehicles.

(g) Vehicles. All vehicles must be parked in the owner's garage or in the owner's driveway. No truck (other than a four wheel pickup truck), trailer, camper, boat, van or similar equipment may be permitted to remain in any driveway or on any lawn for more than 48. The Board President may grant a seven (7) day extension.

(h) Exterior Radio and Television Equipment. Towers, antennas, aerials, or other facilities for the reception or transmission of radio or television broadcasts or other means of communication shall not be permitted on the exterior of the Residence. Satellite dishes are permitted.

(i) Garbage Collection. All rubbish, trash, and garbage shall be removed from the Properties regularly and shall not be allowed to accumulate thereon. Trash and refuse containers shall be permitted at the curb no sooner than the evening prior to collection day and removal no later than the evening of collection day. Containers shall not be visible from the street when stored.
Incinerators are not permitted.

(j) Trade or Business. No gainful profession, occupation, trade or other non residential use shall be conducted in any Residence that generates objectionable or nuisance traffic.

(k) Lake Restrictions. No Boats or water craft of any kind are allowed on the lake at any time. Swimming is never permitted. Fishing is permitted by residents and guests accompanied by residents.

(l) Tennis Court Restrictions. Tennis courts are provided for use by residents and their guests for tennis only. No other ball games, motorized racing cars, mobile toys, tricycles, or any other activity is permitted on the tennis courts. No pets are permitted on the tennis courts. No alcoholic beverages are permitted on or near the tennis courts. Evening tennis play shall conclude no later than 10:00 P.M.

(m) Sidewalks. Sidewalks are for walking traffic. No motor scooters, skateboards, motorbikes, motorcycles, bicycles, all terrain vehicles, or similar type vehicles are permitted on the sidewalks. Only pre-teens are permitted to ride tricycles on the sidewalks.

Section 2. Additional Restrictions. The Board of Directors shall be entitled to invoke additional rules and regulations for the operation, use, and maintenance of the Properties, including the Residence and Common Areas, provided such rules and regulations are not inconsistent with this Declaration.

Section 3. Enforcement. In the event that an Owner fails to comply with the provisions of this Article or any other provisions of this Declaration, the Board shall notify such Owner in writing, of such lack of compliance, which notice shall specify the nature of such lack of compliance. If, within twenty one (21) days following receipt of such notice, such Owner (1) fails to remedy such lack of compliance and (2) fails to deliver written notice to the Board requesting a hearing before the Board with regard to the matters of non-compliance set forth in such notice, the Association may enter upon such Owner's

property for the purpose of remedying the matters set forth in such notice and shall not be liable for trespass in connection with such entry. If the owner timely requests a hearing before the Board, the Board shall promptly hold a hearing and shall provide the Owner with at least seven (7) days' prior written notice concerning the date, time and place thereof. At the hearing, the Owner will have an opportunity to discuss with the Board the merits of the claims set forth in the Board's original notice of noncompliance and the Board will determine what action, if any, is to be taken by the Owner. The decision of the majority of the members of the Board present at the hearing will be binding on the Association and the Owner. In the event that it is determined that the Owner has not complied with the provisions of this Article, the Board shall establish a reasonable time within which the Owner shall so comply. If the Owner fails or refuses to comply within such time period, the Association may enter upon the Owner's property for the purpose of remedying such matters and shall not be liable for trespass in connection therewith. The cost of remedying an Owner's failure to comply with the provisions of this Article or any other provision of this Declaration, including any court costs and attorney's fees shall be assessed to the Owner by the Board. Such assessment shall be due and payable thirty (30) days from the date of written notice thereof and shall be collected and enforced in the manner provided in Article VIII of this Declaration. Should the Board refuse or fail to take action to enforce any decision against an Owner made by the Board under this Article or under Article VIII, any other Owner may take such action to enforce such decision in a court of competent jurisdiction, at the Owners expense and at no liability to the Board or Association.

ARTICLE XI

General Provisions

Section 1. "Term." The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by 67% of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years. agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 2. "Amendment." This Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing sixty-seven percent (67%) of the total voting power of the Association. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Register's Office of Davidson County, Tennessee.

Notwithstanding the foregoing, the following amendments to this Declaration may be made by the Board of Directors, without the vote or consent of any other Member of the Association:

- (a) Change in the name of the development.
- (b) Change in the address of the principal place of business of the Association.

(c) Correction of a typographical or other non-substantive error in this Declaration.

Section 3. "Indemnification." The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director of the Association. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officer and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

ARTICLE XII

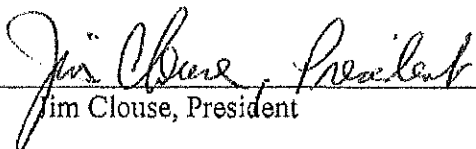
Obligation to Rebuild

Section 1. "Damage and Destruction - Duty to Rebuild." If all or any portion of any residence is damaged or destroyed by vandalism, malicious mischief, fire, windstorm, or other casualty, it shall be the duty of the Owner of said residence to rebuild, repair, or reconstruct said residence in a manner that will restore it substantially to its appearance and condition immediately prior to the casualty, and with at least its original square footage. The plans for the rebuilt, repaired or replacement structure must be submitted to the Board of Directors for approval prior to any such work beginning.

Section 2. "Time Limitation." The owner of any damaged residence shall be obligated to proceed with all due diligence on repair or replacement which shall commence within forty-five (45) days after the damage occurred. Completion for minor damage or replacement shall be completed within sixty (60) days and major damage or replacement should be completed within twelve (12) months from the date damage occurred.

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS DECLARATION AFTER APPROVAL OF 67% OF THE MEMBERSHIP THIS THE 31ST DAY OF DECEMBER, 2005.

HEMMINGWOOD HOME OWNERS ASSOCIATION, INC.

By: 
Jim Clouse, President

Name Printed: _____

Jim Clouse

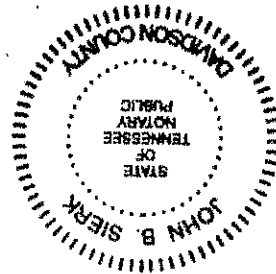
STATE OF TENNESSEE
COUNTY OF DAVIDSON

Subscribed, sworn to and acknowledged before me by Jim Clouse,
the declarant, this 4th day of JUNE, 2013.

Notary Public

[Signature]

My Commission Expires: 5/5/15



Prepared by:
Douglas B. Lewis
Attorney at Law
47 Ashington Lane
Brentwood, TN 37027-4367
615-371-0470

EXHIBIT A

Land in Davidson County, Tennessee, described by a survey by James W. Clark, Tenn. No. 1445, dated June 5, 1985, described as follows:

Beginning at a point on Kelly Road, being the common corner of property owned by Third National Bank, R. W. Bolster, Trustee, of record in Book 5199, page 333, and property owned by Wrene T. Bomer, etux, as of record in Book 6414, page 227, said line running N 1 degree 30' 14" W 1030.78 feet to a point at the common corner of Wrenne T. Bomer, etuc and David K. Deeb, etux; thence S 87 degrees 55' 34" E 172.92 feet to a point; thence S 87 degrees 31' 36" E 113.89 feet to a point; thence S 88 degrees 30' 19" E 135.38 feet to a point; thence S 88 degrees 05' 27" E 209.23 feet to a point, said point being the common corner between property owned by Reece Turner, etux and Henry King McGee; thence leaving said point S 1 degree 36' 16" E 183.28 feet to a point; thence S 89 degrees 43' 52" E 430.11 feet to a point; thence S 89 degrees 55' 22" E 395.12 feet to a point; thence S 88 degrees 13' 11" E 107.19 feet to a point; thence S 89 degrees 39' 36" E 430.39 feet to a point; thence N 0 degrees 11' 376" E 164.70 feet to a point; thence N 2 degrees 46' 47" W 115.52 feet to a point, said point being the common corner between property owned by Richard H. Frank, etux and Mary Jane Crowson, etal; thence leaving said point, N 79 degrees 06' 24" E 189.95 feet to a point; thence N 77 degrees 36' 56" E 114.00 feet to a point, said point being the common corner of property owned by Mary Jane Crowson, etal and Radnor/Nashville Corp.; thence leaving said point, S 2 degrees 21' 20" E 1239.97 feet to a point; thence N 81 degrees 07' 31" W 320.00 feet to a point; thence S 1 degree 21' 33" E 473.56 feet to a point, said point being the common corner of property owned by Radnor/Nashville Corp. and Third National Bank, R. W. Bolster, Trustee; thence leaving said point, N 89 degrees 55' 03" W 838.26 feet to a point; thence S 89 degrees 13' 34" W 253.14 fee to a point, said point being the common corner of property owned by Charles Cornelius, Jr. and Third National Bank, R. W. Bolster, Trustee; thence leaving said point, N 1 degree 23' 04" W 501.85 feet to a point; thence N 89 degrees 37' 25" W 907.24 feet to the point of beginning on Kelly Road, and containing 61.61 acres, more or less.

Being part of the same property conveyed to Joyce C. Rybolt, Trustee for 1975 Jefferson C. Pennington, Jr., Trust, as to an undivided one-third interest, Joyce C. Rybolt, Trustee for 1975 William Scott Pennington Trust, as to an undivided one-third interest, and Joyce C. Rybolt, Trustee for 1975 Thomas Guy Pennington Trust, as to an undivided one-third interest, by deed from Jefferson C. Pennington, Jr. and Thomas Guy Pennington, Co-Executors under the Last Will and Testament of Edna S. Pennington Smith, of record in Book 5262, page 527, Register's Office for Davidson County, Tennessee, being the same property conveyed to Jefferson C. Pennington, as to an undivided 7.03% interest, by quitclaim deed from Joyce C. Rybolt, Trustee for 1975 Jefferson C. Pennington Trust, of record in Book 5262, page 532, said Register's Office, being the same property conveyed to Thomas Guy Pennington, as to an undivided 21.08% interest, by quitclaim deed from Joyce C. Rybolt, Trustee for 1975 Thomas Guy Pennington Trust, of record in Book 5262, page 536, said Register's Office; and being the same property conveyed to Joyce C. Rybolt, Trustee for 1975 Jefferson C. Pennington, Jr. Trust and Joyce C., Rybolt, Trustee for 1975 Thomas Guy Pennington Trust, by deed from Joyce C. Rybolt, Trustee for 1975 William Scott Pennington Trust and William Scott Pennington, of record in Book 5449, page 431, said Register's Office.