

BERKELEY PARK HOMEOWNERS

COVENANTS AND RESTRICTIONS

ORIGINALLY SIGNED: JANUARY 19, 1999

CHANGE DATED: AUGUST 7, 2012*

***Changes are indicated in the document by bold, italicized, and underlined text**

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HOA MANAGEMENT

865-558-3030

DECLARATION OF COVENANTS AND RESTRICTIONS

BERKELEY PARK

KNOW ALL MEN BY THESE PRESENTS, that this Declaration of Covenants and Restrictions made and entered into this ____ day of _____, 1999, by SOUTHERN TRADITIONS PARTNERS, LLC, hereinafter referred to as Developer,

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Article I of this Declaration and desires to create thereon a residential community with permanent parks, playgrounds, open spaces, and other common facilities for the benefit of the said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and, to this end, desires to subject the real property described in Article I together with such additions as may hereinafter be made to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of Tennessee a non-profit corporation, BERKELEY PARK HOMEOWNERS ASSOCIATION, INC. for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Article I is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I **DEFINITIONS**

Section 1. "Architectural Control Committee" shall mean and refer to ***three members of the Berkeley Park Homeowners Association (BPHOA) as the BOPHOA Board of Directors may appoint annually*** until all lots in Berkeley Park shall have been fully developed and permanent improvements constructed thereon and sold to permanent residents; at which time

such term shall mean and refer to those persons selected annually by the Board in compliance with the declaration of the Association to serve as members of said committee.

Section 2. "Association" shall mean and refer to Berkeley Park Homeowners Association, Inc., its successors and assigns.

Section 3. "Board" shall mean and refer to the Board of Directors of the Association.

Section 4. "Common Area" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners, including the subdivision's Park(s), clubhouse and pool, detention ponds, designated public areas, open greenbelt, and any other real estate within Berkeley Park that is not part of a "Lot" or a dedicated road or street.

Section 4.5. "Area of Common Responsibility" shall mean and refer to the "Common Area" together with those areas within or upon each "Lot" which the routine and normal preventive maintenance, repair or replacement are the responsibility of the "Association," which areas include only the following **(a)** all grass situated within or upon the "Lots" and grass located within the dedicated public right-of-way within Berkeley Park; **(b)** all lawns, trees, shrubs, hedges, grass and landscaping located within the "Common Area" of the subdivision including the "street scape" trees situated between the street curbs and sidewalks throughout the entire Berkeley Park subdivision.

Section 5. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including any reasonable reserve, as may be found to be necessary and appropriate by the Board pursuant to this Declaration and the Bylaws and Articles of Incorporation of the Association.

Section 6. "Declaration" shall mean the covenants, conditions, restrictions and easements and all other provisions herein set forth in this entire document, as may from time to time be amended.

Section 7. "Developer" shall mean and refer to (i) Southern Traditions Partners, LLC, a Limited Liability Corporation, or (ii) any successor-in-title or any successor-in-interest to Southern Traditions Partners, LLC to all or any portion of the Property, provided in the instrument of conveyance to any such successor-in-title or interest, such successor-in-title is expressly designated as the "Developer" hereunder by the grantor of such conveyance, which grantor shall be the Developer hereunder at the time of such conveyance.

Section 8. "Lot" shall mean and refer to any parcel of land shown upon any recorded subdivision plat of the Property upon which a single-family residence may be constructed.

Section 9. "Owner" shall mean and refer to the recorded owner, whether one or more Persons, of the fee simple title to any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of any obligation.

Section 10. "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 11. "Plat" shall mean and refer to that certain Final Subdivision Plat for Berkeley Park, Unit One prepared by Urban Engineering, Inc., and recorded in Cabinet P, Slide 301-A, in the Register's Office for Knox County, Tennessee and any further plats recorded by the Developer for any additional units of Berkeley Park.

Section 12. "Property" shall mean and refer that certain real property shown on the Plat as Berkeley Park and any additional units of Berkeley Park recorded by the Developer.

Section 13. "Structure" shall mean and refer to: (i) any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, gazebo, shed, greenhouse or bathhouse, coop, or cage, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot; (ii) any excavation, grading, fill ditch, diversion dam or other thing, object or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and (iii) any change in grade at any point on a Lot of more than twelve (12) inches, whether or not subsection (ii) of this Section 13 applies to such change.

ARTICLE II

ARCHITECTURAL CONTROL COMMITTEE (ACC)

Section 1. Purpose, Powers and Duties of the Architectural Control Committee. The purpose of the Architectural Control Committee, hereinafter referred to as "ACC", is to assure that the installation, construction or alteration of any Structure on any Lot is submitted to the Architectural Control Committee for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the development of the Property; and (ii) as to the location of the Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all of the powers and duties to do each and everything necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

Section 2. Developer's Obligation. The Developer shall abide by the Declaration of Covenants and Restrictions and any amendments thereto but not withstanding anything stated herein to the contrary, the Developer shall be exempt from any requirements, directives, or orders set forth by the Board of Directors or any committee appointed by the Board of Directors including, but not limited to, the Architectural Control Committee.

Section 3. Construction Bond. On all structures, the Builder or Homeowner shall submit to the Architectural Control Committee a Construction Bond of three thousand dollars (\$3,000.00) in cash per unit. **Said \$3,000.00 shall be released by the Architectural Control Committee to the BPHOA Treasurer who will deposit said \$3,000.00 into escrow** until the improvements are complete and the Architectural Control Committee performs its Final Inspection. The Developer shall **not** be exempt from this requirement. This exemption shall not apply to members, managers, partners or stockholders of the Developer doing construction for their own purposes. The construction bond shall be used to offset any costs incurred by the Association or the Architectural Control Committee as a result of or to:

- (a) Repair damage to any property caused by the Builder or Homeowner or their subcontractors, suppliers and representatives during construction;
- (b) The expenditure of legal fees and other costs incurred by the Architectural Control Committee in order to correct any construction or alteration not performed in substantial compliance with the plans receiving Final Approval; and
- (c) Pay for any fines or penalties imposed by the Architectural Control Committee or the Association for violations of any rules of conduct or regulations governing use of property within Berkeley Park.

Section 4. Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been first submitted to and approved in writing by the Architectural Control Committee. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Architectural Control Committee, including, without being limited to:

- (a) a site plan showing the location of all proposed and existing Structures on the Lot, including building setbacks, open space, driveways, walkways and parking spaces including the number thereof;
- (b) floor plans;
- (c) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all back-filling and landscaping are completed;
- (d) specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors of all proposed Structures and alterations to existing Structures, and also showing front, side and rear elevations;
- (e) plans for landscaping and grading;
- (f) garage door design;
- (g) samples of building and paint materials to be used;
 - i. front door design and type of material and color of door;
 - ii. design of front, rear and side covered and uncovered porches detailing dimensions of railing and balusters as well as type of material to be used; and

iii. exterior colors.

Section 5. Approval of Builders. Any builder or landscaper, prior to performing any work on any Lot on the Property, must first be approved by the Architectural Control Committee as to financial stability, building or landscaping experience and ability to build or landscape Structures or grounds of the class and type of those which are to be built on the Property. Such approval shall be within the sole discretion of the Architectural Control Committee. No Person shall be approved as a builder or landscaper unless such Person obtains his income primarily from construction or landscaping of the type which builder or landscaper is to perform upon the Property. No Owner will be permitted to act as his own builder or contractor except where such Owner is a licensed general contractor in the State of Tennessee, in good standing and obtains his income primarily from the construction of the type of structures to be constructed.

Section 6. Approval and Disapproval of Plans and Specifications.

(a) The Architectural Control Committee shall have the right to approve or disapprove any plans and specifications submitted to it in its sole and uncontrolled discretion, which approval or disapproval may be based upon any grounds, including purely aesthetic considerations which shall be deemed sufficient.

(b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval of any plans and specifications for use in connection with any Lot or Structure shall not be deemed a waiver of the Architectural Control Committee's right, in its sole discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with other Lots or Structures. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

(c) Neither Developer nor any member of the Architectural Control Committee shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. Further, approval of plans and specifications by the Architectural Control Committee shall not be deemed to represent or warrant to any Person the quality, function or operation of the Structure or of any construction, workmanship, engineering, materials or equipment. Neither Developer nor any member of the Architectural Control Committee shall be liable in damages or in any other respect to anyone submitting plans or specifications for approval under this Article, or to any

Owner, or to any other Person having an interest in any of the Property by reason of mistake in judgment, negligence, misfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications or contractor. By submission of such plans and specifications or selection of contractors to the Architectural Control Committee, every Owner of any Lot releases and agrees to hold harmless and to defend Developer and any member of the Architectural Control Committee from any such alleged liability, claim and/or damage.

Section 7. Obligation to Act. The Architectural Control Committee shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the Architectural Control Committee, if granted, together with any conditions imposed by the Architectural Control Committee, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the Architectural Control Committee to take action within thirty (30) days of the receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

Section 8. Right of Inspection. The Architectural Control Committee, its agents and representatives, shall have the right during reasonable hours to enter upon and inspect any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and the Architectural Control Committee shall not be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection.

Section 9. Violations.

(a) If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the Architectural Control Committee such violation shall have occurred, the Architectural Control Committee shall be entitled and empowered to enjoin or remove any such construction. Any costs and expenses incurred by the Architectural Control Committee in enjoining and/or removing any construction or improvements shall be added to and become a part of the assessment to which the Owner and his Lot are subject.

(b) The Architectural Control Committee shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within ten (10) days after the mailing of the aforesaid notice of violation, then the Architectural Control Committee shall have the right of abatement as provided in Section 1(b) of Article XII hereof. In addition to the right of

abatement, the Board, upon being informed of such violation by the Architectural Control Committee, shall be entitled to seek equitable relief to enjoin such construction.

Section 10. Conduct. All Builders and Homeowners shall be held responsible for the acts of their employees, sub-contractors, suppliers and other persons or parties involved in construction or alteration of a home site. In this regard, a Builder or homeowner shall be responsible for the following:

- (a) Ensuring that the construction site is kept clean and free of debris and waste materials, and that stockpiles of unused materials are kept in a neat and orderly fashion.
- b) Prohibiting the consumption of alcoholic beverages, illegal drugs or other intoxicants that could hamper the safety or well-being of other personnel on the site or affect the quality of workmanship.
- (c) Assuring that the aforementioned are properly insured.
- (d) Assuring that the aforementioned do not commit any violation of the rules and regulations of Berkeley Park.
- (e) Ensuring that all driveways on the construction site are sufficiently graveled, a portable toilet is available and used by the construction workers and any mud or any debris caused by the construction are removed from the adjoining roadways as soon as reasonably possible. Further, silt fences shall be installed within one (1) foot parallel to the street curb of every "Lot" to prevent vehicles from crossing the sidewalks creating damage in addition to keeping silt, mud, and other debris off of the street; and
 - a. Marking and roping off a twenty-five (25) foot access at the location of the driveway and allowing vehicular access to each lot only from this access location. Vehicle access to each lot shall not be allowed at any other location.

Section 11. Government Regulations. Nothing contained herein abrogates, modifies, or changes the applicability of any ordinances, statutes, codes, rules and regulations of the Town of Farragut or other governmental units as applicable and the necessity of obtaining a building permit, inspection or otherwise complying with applicable provisions of governmental codes, statutes, ordinances, rules and regulations.

ARTICLE III **Board of Directors**

Section 1. Composition. The affairs of the Association shall be governed by the Board. The initial Board shall be composed of five (5) persons. The directors shall be owners of lots or spouses of such owners; provided, however, that no owner and his or her spouse may serve on the Board at the same time. Notwithstanding the above so long as there shall be a Class B member of the Association, the directors need not be owners of lots. The precise number of directors shall be fixed from time to time by resolution of the Board.

Section 2. Nomination. Nomination for election to the Board shall be made by a nominating committee which shall consist of three (3) members appointed by the President to

serve from the close of one annual meeting to the close of the succeeding annual meeting. Such appointment shall be announced at the annual meeting. The nominating committee may nominate any number of qualified individuals, but no less than the number of directors to be elected. The nominations shall be made at least twenty-one (21) days prior to the annual meeting and a brief statement about the qualifications of each individual so nominated shall be included with the notice of the annual meeting. Nominations shall also be allowed from the floor at the meeting. Failure to comply with the provision hereof shall in no way invalidate the election of directors so nominated.

Section 3. Elections and Annual Meeting. The annual meeting shall be held on the first Tuesday in October. Directors to be elected by the members shall be elected by a majority vote at the annual meeting from those nominated. A quorum must be present. For the purpose of electing a Board of Directors, a quorum shall be deemed present when fifty percent (50%) of all votes are present in person or by proxy. If the required quorum is not present, an adjourned annual meeting shall be called subject to the same notice requirements as set forth for the annual meeting, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4. Term of Office. The directors shall be elected as provided in Section 3 of this Article. Each director, except in case of death, resignation, retirement, disqualification or removal, shall serve **a two year term of office. Directors shall be elected in staggered fashion so as to facilitate a coherent relationship within the Board. To accommodate such relationship, three directors shall be elected in odd years and two directors shall be elected in even years. Each director's term shall expire at the annual meeting two years hence from the year they were elected** or until his successor shall have been elected and qualified.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by a majority vote of the members of the Association and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the members shall be given at least ten (10) days notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 6. Vacancies. Vacancies in the Board caused by any reason, including the addition of a new director or directors but excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board for the remainder of the term of the director being replaced. Said director shall serve until a successor shall be elected at the **conclusion of the replaced director's two year term.**

Section 7. Compensation. Directors shall not be compensated unless and to the extent the members of the Association authorize at any meeting duly called for that purpose.

Section 8. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least once every three months. The Board shall meet within ten (10) days after each annual meeting of members.

Section 9. Special Meetings. Special meetings of the Board may be called by the President on three (3) days notice to each director given by mail, in person or by telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President, Secretary or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

Section 10. Quorum. A quorum of directors shall be deemed present throughout any Board meeting at which a majority of the directors are present at the beginning of such meeting.

Section 11. Conduct of Meetings. The President shall preside over all meetings of the Board and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. Roberts Rules of Order (latest edition) shall govern the conduct of the meetings of the Board when not in conflict with the Declaration or these By-Laws.

Section 12. Action Without a Meeting. Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if all of the directors consent in writing to such action. Such written consent or consents shall be filed with the minutes of the Board.

Section 13. Powers and Duties. The Board shall exercise for the Association all powers, duties and authority vested therein by the Declaration of these By-Laws, except for such powers, duties and authority reserved thereby to the members of the Association or the Developer. The Board shall have the following powers and duties:

- (a) to elect and remove the officers of the Association as hereinafter provided;
- (b) to administer the affairs of the Association;
- (c) to engage the services of an agent (hereinafter sometimes referred to as the "Managing Agent") to maintain, repair, replace, administer and operate the Area of Common Responsibility or any part thereof for all of the Lot Owners, upon such terms and for such compensation as the Board may approve, including a Managing Agent which is affiliated with one or more directors, or the Developer, or both;
- (d) to administer, manage and operate the Area of Common Responsibility and recreational facilities located thereon, and to formulate policies therefor;
- (e) to adopt rules and regulations, with written notice thereof to all Lot Owners, governing the details of the administration, management, operation and use of the Area of Common Responsibility and any recreational facilities located thereon, and to amend such rules and regulations from time to time;

(f) to provide for the operation, care, upkeep, maintenance, repair, placement and improvement of the Area of Common Responsibility and any recreational facilities located thereon and payments therefore, and to approve payment vouchers or to delegate such approval to the officers of the Association or the Managing Agent;

(g) to have access to each Lot from time to time as may be necessary for the maintenance and/or repair of the Common Area or equipment located within the Common Area;

(h) to obtain adequate and appropriate kinds of insurance to protect the Association and/or members of the Board of Directors or members of committees appointed by the Board of Directors including the Architectural Control Committee and other insurance as provided by Article XI of the Declaration;

(i) to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Area of Common Responsibility and any recreational facilities located thereon, and to delegate any such powers to a Managing Agent (and any employees or agents of a Managing Agent);

(j) to appoint committees and to delegate to such committees the Board's authority to carry out certain duties of the Board;

(k) to determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deems advisable;

(l) to estimate the amount of, prepare, adopt and distribute the budget for the association not less frequently than annually, to provide the manner of assessing, levying on and collecting from the Lot Owners the annual and special assessments, and to levy fines against one or more occupants in accordance with the Declaration;

(m) to keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the Area of Common Responsibility and any recreational facilities located thereon;

(n) to enter into agreements or arrangements for premises suitable for use as apartments for maintenance or management personnel, upon such terms as the Board may approve;

(o) to bid and purchase, for and on behalf of the Association, any lot, or interest therein, at a sale pursuant to a mortgage foreclosure, a foreclosure of the lien for annual assessments, special assessments or both, or any order or direction of a court, or at any other involuntary sale;

(p) to make such mortgage arrangements and special assessments proportionately among the respective Lot Owners, and other such financing arrangements, as the Board may deem desirable, in order to close and consummate the purchase or lease of a lot, or interest therein, by the Association; provided, however, that no such financing arrangement shall be secured by an encumbrance on any interest in the Property other than the lot, or interest therein, to be purchased or leased;

(q) to act in a representative capacity in relation to matters involving the Area of Common Responsibility or more than one lot, on behalf of the Lot Owners, as their interests may appear;

(r) to enforce by legal means the provisions of the Declaration and these By-laws with respect to the Property;

(s) to renew, extend or compromise indebtedness owed to or by the Association;

(t) at its discretion, to authorize occupants to use the Common Area and any recreational facilities located thereon for private parties and gatherings and, at its discretion, to impose reasonable charges for such private use;

(u) unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of the Lot Owners as expressed in a resolution duly adopted at any annual or special meeting of the Association;

(v) the Association shall (i) have all powers permitted to be exercised by a nonprofit corporation and (ii) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized, and to do every other act not inconsistent with law which may be appropriate to promote and attain the purposes set forth in the Declaration and these By-Laws; and

(w) upon there being no Class B members, to assume all the duties and obligations of the Developer.

Section 14. Nondelegation. Nothing in this Article or elsewhere in these By-Laws shall be considered to grant to the Board, the Association or to the officers of the Association any powers or duties which, by law, have been delegated to the Lot Owners.

ARTICLE IV **Officers**

Section 1. Designation. At each regular or adjourned annual meeting of the Board after the Lot Owners elect the Board, the directors present at said meeting shall elect the following officers of the Association by a majority vote:

(a) a President who shall be a director and who shall preside over the meetings of the Board and of the Lot Owners, and who shall be the chief executive officer of the Association;

(b) a Secretary, who shall keep the minutes of all meetings of the Board and of the Lot Owners and shall be designated as the officer to mail and receive all notices served by or upon the Board or the Association and execute amendments to the Declaration and these By-Laws, and shall, in general, perform all the duties incidental to the office of Secretary, and may be a representative of the Managing Agent;

(c) a Treasurer, who shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported; provided, however, that the duties of the Treasurer may be performed by an employee or independent contractor retained by the Board; and

(d) such additional officers as the Board shall see fit to elect. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Powers. The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit.

Section 3. Term of Office. Each officer shall hold office for the term of one year and until his successor shall have been appointed or elected and qualified.

Section 4. Vacancies. Vacancies in any office shall be filled by the Board by a majority vote at a special meeting of said Board. Any officer so elected by the Board to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds.

Section 5. Compensation. The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by the Lot Owners at a meeting duly called for that purpose.

ARTICLE V

Membership and Voting Rights

Section 1. Membership. Every Owner of a Lot which is subject to this Declaration shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration and shall pass automatically to an Owner's successor-in-title to the Lot.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Initially, the Class A members shall be all Owners, with the exception of the Developer, and shall be entitled to one vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Developer and shall be entitled to one (1) vote for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following events:

- (a) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or
- (b) seven (7) years from the date this Declaration is filed of record in the Register's Office for Knox County, Tennessee; or
- (c) when, in its discretion, the Developer so determines.

Section 3. Initiation Fee. Every Person or entity who purchases a Lot in Berkeley Park for use as a permanent personal residence shall pay to the Association an initiation fee of \$500.00 at the time of purchase of the Lot; provided, however, said initiation fee shall be due

only from the Person who first purchases the Lot for use as a permanent residence. The \$500.00 initiation fee is a permanent amount and cannot be raised or lowered, notwithstanding anything to the contrary contained herein.

ARTICLE VI

Property Rights

Section 1. Member's Easement of Enjoyment. Subject to the provisions herein, every member of the Association shall have a right and easement of use and enjoyment in and to the Common Area (including, without limitation, the right of pedestrian (but not vehicular)) access, ingress and egress to and from his Lot over those portions of the Common Area from time to time designated for such purposes and the right of use of such recreational facilities as may be erected and maintained by the Association for such purposes from time to time, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(a) the right of the Association to adopt and publish rules and regulations governing the use of the Common Area.

(b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility now or hereafter located or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use such recreational facilities.

(c) the right of the Association to suspend an Owner's voting rights and rights to use any recreational facilities within the Common Area for any period during which any assessment of the Association against said Owner's Lot remains unpaid.

(d) the right of the Association to borrow money for the purpose of improving the Common Area or any portion thereof, or constructing, repairing or improving any facilities located or to be located thereon and, upon the assent of two-thirds of the Class A members and the Class B member, if any, to give as security a mortgage conveying all or any portion of the Common Area. The lien and encumbrance of any such mortgage, however, shall be subject and subordinate to all rights, interests, easements and privileges herein reserved or established for the benefit of Developer, any Owner, or the holder of any mortgage, irrespective of when executed, given by Developer or any Owner.

(e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded.

(f) the easements reserved in Article IX of this Declaration.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of use and enjoyment in and to the Common Area and the improvements

thereon, if any, to the members of his family, his tenants, guests and invitees, subject to such regulations as may be established from time to time by the Association.

Section 3. Title to Common Area. Developer may from time to time convey to the Association, at no expense to the Association, real and personal property for the common use and enjoyment of the Owners. The Association hereby covenants and agrees to accept from Developer all such conveyances of real and personal property. Notwithstanding any legal presumption to the contrary, the fee simple title to such real and personal property designated as Common Area or for public use, together with all rights therein, shall be reserved to Developer until such time as the real and/or personal property is conveyed to the Association or to any municipality or other governmental body, agency or authority.

Section 4. No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any such judicial partition.

ARTICLE VII

Covenant for Maintenance and Capital Improvement Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments which may or shall be levied by the Association, and (2) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, including reasonable attorney's fees, shall be a charge and continuing lien running with the land upon the Lot against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors-in-title unless expressly assumed by them.

Section 2. Purpose of Assessments. The initial assessment begins on April 1, 1999. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in Berkeley Park; to pay Common Expenses, including, but not limited to, the cost of the improvement and maintenance of the Common Area and Area of Common Responsibility situated upon Berkeley Park, including management fees to others to make such repairs as the Association may deem necessary; to pay ad valorem taxes and other charges for services provided by the Association assessed against the Association Property and to pay insurance premiums; to pay for electricity for exterior lighting in the Common Area, and for such other purposes as the Board may determine, including storm water detention, control, and dispersal facilities on common property or otherwise maintained

by the Association. In addition, the Assessments shall include amounts necessary to establish an adequate reserve fund for routine and normal preventative maintenance, repairs and replacement of those portions of the Common Area and Area of Common Responsibility that must be replaced on a periodic basis. Such reserve fund shall be included in the annual Assessment and shall be payable in periodic installments rather than by special assessment. The annual assessment shall be Seventy Dollars (\$70.00) per month or Eight Hundred Forty Dollars (\$840.00) per annum for a period of two years from the date that the initial assessment begins. There will be no special assessments nor will there be an increase of annual assessments for a period of two (2) years from the time the initial annual assessment begins on April 1, 1999.

Section 3. Determination of Annual Assessments. If the Association incurs ongoing Common Expenses, it shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses of operating the Association for the coming year, such budget shall include a capital contribution or reserve account in accordance with the capital needs of the Association. The budget and the proposed annual assessments to be levied against each Lot shall be delivered to each Owner no later than ten (10) days prior to such annual meeting. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Developer, so long as there is a Class B member; or (ii) a vote of a majority of the Owners voting in person or by proxy at such meeting. In the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then until a budget has been determined as provided herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, the Board may call a meeting of the Association for the approval of a special assessment.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of at least two-thirds (2/3) of the Class A members and the Class B member, if any, voting in person or by proxy at a meeting duly called for such purpose. Special assessments may also be levied by the Association if for any reason the annual assessments prove inadequate to defray the expenses of the Association in fulfilling its duties and obligations hereunder, subject to the consent of the members as set forth above.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of

members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessments. Annual and special assessments must be fixed at a uniform rate for all lots except those lots owned by the Developer that do not have a completed residence on them and will be collected on a quarterly basis.

Section 7. Fiscal Year, Membership and Annual Assessments. The fiscal year for the Berkeley Park Homeowners' Association shall begin on April 1 and end on March 31. A pro rated portion of the quarterly payments shall be due and membership shall begin on the day that ownership in Berkeley Park begins. Upon a person or entity's ceasing to be a Member of the Association, such Member shall not be entitled to any refund of his annual assessment. The Developer shall not be responsible for assessments on Lots which do not have a completed residence constructed thereon.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum legal rate per annum. In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessment and may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees or any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of the liens against real property, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage foreclosure on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with the foreclosure of said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid for the interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, abandonment of his Lot or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

Section 9. Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first purchase money security deed, or security deed representing a first lien on said property. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Area; (c) all properties exempt from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VIII **Maintenance**

Section 1. Association's Responsibility.

(a) Except as otherwise provided for herein, the Association shall maintain and keep in good repair all portions of the Common Area and improvements thereon, if any. The Association's responsibility with respect to the Common Area shall be deemed to include the maintenance, repair and replacement of (i) all roads, driveways, walks, parking areas and buildings and other improvements situated within the Common Area; (ii) such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Area; (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Area of Common Responsibility; and (iv) cutting, fertilizing, treating for weeds and trimming all grass located upon a lot or upon an Area of Common Responsibility.

(b) In addition to the Association's other responsibilities, the Association shall be responsible for the maintenance, upkeep and repair of the following property located within Berkeley Park:

1. All brick paved streets and sidewalks including, but not limited to, the section of Prince George Parish located at the intersection of St. John Court to be paved with brick pavers and shown shaded on the Final Plat of Unit 1 of Berkeley Park dated November 30, 1998 by Urban Engineering, Inc.;

2. All sidewalks on St. John Court, Prince George Parish, McKinley Pointe Lane and Belle Grove Road except the sidewalks at the following locations which shall be maintained by the Town of Farragut:

Sidewalks fronting lots 1-10 and 87 on the same side of the street only

Sidewalks fronting lots 14-19 on the same side of the street only

Sidewalks fronting lots 41-49 on the same side of the street only

Section 2. Owner's Responsibilities. Each Owner of a Lot, whether vacant or occupied, shall keep and maintain his Lot and the exterior of any and all improvements located thereon in a neat, attractive and safe condition. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and care for roofs, gutters, down spouts, building surfaces, walks and other exterior improvements. Further, it shall be the Owner's responsibility to do routine or periodic maintenance of trees, shrubs, hedges, mulch, flowers, stone or brick decorative landscape walls or borders for bedding plants or trees including, but not limited to trimming and pruning of landscaping, removal of dead trees and/or dead tree limbs, raking and removal of leaves, shrubs and other landscaping material. Annual grass over-seeding and replacement of unhealthy or dead sod shall be the responsibility of the Owner.

Should any Owner of a Lot fail to maintain his Lot or the improvements thereon as set forth herein above, the **Board of Directors**, its agents and representatives, may, after thirty (30) days written notice to the Owner of such Lot, enter upon his Lot for the purpose of removing garbage or trash, or for performing such exterior maintenance as the **Board of Directors**, in the exercise of its sole discretion, deems necessary or advisable. Such Owner shall be personally liable to the **Board of Directors** and the Association for the direct and indirect cost of such maintenance, which costs shall be added to and become part of the assessment to which such Owner and his Lot are subject. Although notice given as herein provided shall be sufficient to give the **Board of Directors**, its agents and representatives, the right to enter upon such Lot and perform such maintenance, entry for such purpose shall only be between the hours of 9:00 a.m. and 5:00 p.m. on any day except Sunday. The provisions hereof shall not be construed, however, as an obligation on the part of the **Board of Directors** to provide garbage or trash removal service, or to perform such exterior maintenance.

ARTICLE IX **Easements**

Section 1. Utility Easements. There is hereby created in favor of the Association and any governmental unit, utility, or service provider an easement upon, across, over, through and under all of the Common Area for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including but not limited to, water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association, to enter in or to cross over the Common Area and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Area and the Lots, as provided for herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property except as initially programmed and approved by the Developer or thereafter approved by Developer or the Board or as otherwise provided by law.

Should any utility furnishing a service covered by this general easement herein request a specific easement to be recorded in a separate document, Developer or the Association shall have the right to grant such easement on the Common Area.

Section 2. Easements for Developer. Developer hereby reserves for itself, its successors and assigns, the following easements and rights-of-way in, on, over, under and through any part of the Property owned by Developer and the Common Area for so long as Developer owns any Lot primarily for the purpose of sale:

(a) For the erection, installation, construction and maintenance of wires, lines and conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antenna, television cables and other utilities;

(b) For the construction of improvements on the Lots;

(c) For the installation, construction and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility facility;

(d) For the use of the Common Area and any sales offices, model units and parking spaces in connection with its efforts to market Lots; and

(e) For the maintenance of such other facilities and equipment as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots.

Section 3. Easements for Association. There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including any management company retained by the Association, to enter upon the Area of Common Responsibility to perform their respective duties.

Section 4. Easement for Entrance Park. There shall be an easement for Developer and the Association to enter upon Lots 50 and Lots 85 to maintain, construct and repair the entrance park structures including, but not limited to, the fountain pool, fountain pool equipment and apparatus, retaining walls, brick pavers and landscaping material. The Owners of Lots 50 and 85 shall not alter, maintain or remove park structures or landscaping materials.

ARTICLE X

General Covenants and Restrictions

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon:

Section 1. Residential Use. All Lots shall be restricted exclusively to single-family residential use. No Lot, or any portion thereof, shall at any time be used for any commercial, business or professional purpose; provided, however, that nothing herein shall be construed to prohibit or prevent Developer or any builder of residences in Berkeley Park from using any Lot owned by Developer or such builder for the purpose of carrying on business related to the development, improvement and sale of Lots in Berkeley Park.

Section 2. Common Area. The Common Area shall be used only by the Owners and their agents, servants, tenants, family members, invitees and licensees for access, ingress to and egress from their respective Lots and for such other purposes as may be authorized by the Association.

Section 3. Nuisances.

(a) No unlawful, noxious or offensive activities shall be carried on in any Lot, or upon the Common Area, nor shall anything be done therein or thereon which, in the judgment of the Board, constitutes a nuisance, causes unreasonable noise or disturbance to others or unreasonably interferes with other Owners' use of their Lots and/or the Common Area.

(b) No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of an Owner's Lot so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Property or any portion thereof.

(c) All alarms or security systems with a siren, bell or other auditory warning device shall have an automatic device to stop the siren, bell or other device from sounding after a five (5) minute period of time.

Section 4. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for the prevention and control of such erosion or siltation. The Architectural Control Committee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 5.

Section 5. Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the Architectural Control Committee of plans and specifications for the landscaping to accompany such construction or alteration.

Section 6. Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefor approved by the Architectural Control Committee. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot without the prior written consent of the Architectural Control Committee.

Section 7. Signs.

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the Architectural Control Committee's prior written approval of plans and

specifications therefor, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (i) Such signs as may be required by legal proceedings;
- (ii) A sign indicating the builder of the residence on the Lot;

(iii) A single "For Sale" sign posted by the owner or their representing realtor, no larger than 4 square feet. For the original sale of property by the Builder, a second sign of the same maximum size, located above, below or immediately adjacent to the realtor sign, shall be permitted.

(iv) Directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Architectural Control Committee.

(v) "Open House" signage to comply, with the rules of the Town of Farragut. (At the time of this writing, signage may go up on Friday afternoon after 4 pm and must be taken down by 6 pm on Sunday).

(vi) Builder and/or Developer may place a "Sold" or "Sale Pending" sign on any Lot or house and leave signage up for a time period not to exceed fourteen (14) days following consummation of the sale of any completed house.

(vii) On Lots sold to third-party buyers, Developer may keep a "Sold" or "Sale Pending" sign posted until the time the Owner commences construction on the Lot.

(viii) On lots sold to third-party buyers, Developer may keep "Sold" signs posted indefinitely at Developer's discretion.

Section 8. Setbacks. In approving plans and specifications for any proposed Structure, the Architectural Control Committee may establish setback requirements for the location of such Structure which are more restrictive than those established by the Plat. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

Section 9. Fences and Walls. In general, fences and walls (except those installed by the developer or otherwise described in this document) are not allowed in Berkeley Park as they are often contrary to the architectural and landscaping concepts as well as the sense of community that is promoted. In the backyard area, fences will be permitted from an approved set of fencing types adopted for use by the Architectural Control Committee, and must match materials of the adjacent house. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for such fences and walls. All HVAC enclosures shall be "L" shaped and left open only on the side facing the rear property line, and closed to the side facing the front property line in addition to the side facing the side property line. All exterior mechanical equipment including, but not limited to, transformers, vents, air conditioning compressors, pool pumps, meters, etc., shall be concealed from view by wall of the same material and color as the building.

Section 10. Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the Architectural Control Committee (ACC) of

plans and specifications. Specifications shall include the proposed materials to be used in constructing such roads and driveways. The Landscape Architect appointed by the developer will work with each homeowner to establish location, configuration and materials for roads and driveways, subject to the approval by the Architectural Control Committee. Parking spaces, garages, and the driveway to garage shall be planned and executed in an attractive and functional manner and shall consider the location of existing trees, topography, street scape and compatibility with surrounding improvements. All home-sites shall have a driveway of stable and permanent construction of at least twelve (12) feet in width. Unless prior approval is obtained from the Architectural Control Committee, all driveways must be paved with brick, concrete or stone. Driveway aprons, the portion of the driveway between the public sidewalk and curb shall be paved with ornamental brick pavers in a color or pattern that complements the house. The pavers shall be installed on a solid aggregate gravel base with secured edges to prevent settling or movement.

Section 11. Antenna. In the event that antenna, satellite dishes **or outdoor speakers** other such devices are requested to be allowed upon Lots by any valid governmental rule or regulation, then the Architectural Control Committee shall have the authority to restrict the location, size, placement and type of such devices to reduce the visual impact of such devices as much as possible. **As a general guideline, such items should not be visible from the street.** Before any such device may be placed upon any Lot, the Lot owner must submit plans to the Architectural Control Committee for its consideration and approval as required for any other structure.

Section 12. Clotheslines. No outside clothesline shall be placed on any Lot.

Section 13. Recreational Vehicles and Trailers. No trailer, trailer house, boat, or recreational vehicle shall be parked on any Lot or on any of the streets. While nothing contained herein shall prohibit the use of portable or temporary buildings or trailers as field offices by contractors during actual construction, the use, appearance and maintenance of such a building or trailer must be specifically approved by the Architectural Control Committee prior to its being moved onto the construction site.

Owner's house guest may park their recreational vehicles and/or trailers at Berkeley Park's clubhouse/pool parking lot situated in Unit 2 of Berkeley Park.

Section 14. Recreational Equipment and Pools. Swimming pools, spas, recreational and/or playground equipment are permitted subject to the Architectural Control Committee's approval of plans and specifications of structures. Pools and spas must be in ground and constructed of gunite. **No swimming pool, recreational and/or playground equipment of any kind shall be erected, installed or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for such structures. All additions of this sort must be located in the "Backyard Area" (the 35ft. wide space between the rear wall of the house and the rear property line area). Playground equipment must be constructed of wood other than pressure treated pine. No above ground clubhouses, forts, dollhouses or tree houses are permitted.**

Trampolines must not be visible from the street. Basketball goals must be installed in ground (bolted in concrete and removable) or portable goals. Goals cannot extend in front of front corner of home.

Section 15. Accessory Structures. The Architectural Control Committee shall have the right to approve or disapprove the plans and specifications for any accessory structure to be erected on any Lot, and construction of an accessory structure may not be commenced until complete final plans and specifications shall have been submitted and approved by the Architectural Control Committee in accordance with the provisions of these covenants. All additions of this sort must be located in the "Backyard Area" (the 25 ft. Wide space between the rear wall of the house and rear property line area.)

Section 16. Improvement of Lots. All construction of dwellings, accessory structures and all other improvements in Berkeley Park shall be undertaken and completed in accordance with the following conditions:

(a) All construction shall be carried out in compliance with the laws, code rules, regulations and orders of all applicable governmental agencies and authorities.

(b) All single-family residences constructed on the Lots shall be "traditional" in style. The determination of whether or not a residence is "traditional" shall be decided by the Architectural Control Committee in its sole and uncontrolled discretion.

(c) Concrete or concrete block or cinder block shall not be used as a building material for the exposed exterior surface of any dwelling or accessory structure constructed or placed on any Lot, and there shall be no chain-link fence or fences or walls of any other material which the Architectural Control Committee determines to be incompatible with dwellings or other structures in Berkeley Park.

(d) Only one mailbox shall be located on any Lot. All mailboxes shall be of a common design and shall include only the surname and house number, and shall be located as prescribed by the United States Postal Service. **The owner shall purchase mailbox from approved suppliers and maintain/repair according to mailbox specifications. Information regarding specifications and suppliers will be kept by Board of Directors.**

(e) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory structure on such Lot, nor shall any such building materials or devices be stored on any Lot for longer than the length of time reasonably necessary for the construction in which such materials or devices are to be used.

(f) No exposed, above ground tanks for the storage of fuel or water or any other substance shall be located on any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the Architectural Control Committee.

(g) Adequate off-street parking shall be provided for each Lot.

(h) All garages must have doors of raised panel construction, and each garage door must be coordinated with the dwelling to which it is appurtenant. Garage doors shall be kept in working order and shall be kept closed when not in use.

(i) No window air conditioning unit may be located in any part of any dwelling or accessory structure. All exterior compressor units shall be ground mounted and screened by a wall of material identical with that of the building.

(j) Any screen porch which is a part of any dwelling or accessory structure must have a dark color screen, and no bright color silver finish screens may be used.

(k) No plumbing vent or heating vent shall be placed on the front side of any roof of any dwelling or accessory structure, and any such vent shall be painted the same color as the roof on which it is placed.

(l) Any construction on a Lot shall be at the risk of the Owner of such Lot and the Owner of such Lot shall be responsible for any damage to any curbing, sidewalks, or street resulting from construction on such Lot. Any damage to any section(s) of the sidewalk must be repaired by replacing completely all sections affected. Repairs of such damage must be made as soon as reasonably possible but in no event not more than thirty (30) days after completion of such construction.

(m) The enclosed, heated living area (exclusive of garages, porches, terraces, bulk-storage and basement) of one-story dwellings shall contain not less than 2,400 square feet. The enclosed, heated living area (exclusive of garages, porches, terraces, bulk-storage and basement) of all one and one-half story and two-story dwellings shall contain not less than 2,700 square feet. No dwelling shall be constructed exceeding two and one-half stories in height on any Lot.

(n) Utility Service. No lines, wires or other devices for communications purposes, including telephone, television, data and radio signals, or for transmission of electric current or energy, shall be constructed or placed on any home site unless the same shall be in or by conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings, or other approved improvement. Above ground electrical transformers and other equipment may be permitted if properly screened and approved by the Architectural Control Committee. In addition, all gas, water, sewer, oil and other pipes for gas or liquid transmission shall also be placed underground or within or under buildings. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of approved improvements.

(o) Refuse and Storage Areas. Garbage and refuse shall be placed in containers and shall be capped and contained in such a manner that they are inaccessible to animals. The containers shall be concealed within buildings; be concealed by means of a screening wall of material identical with that of the building. These elements shall be integrated with the building plan, be designed so as not to attract attention, and shall be located in as reasonably inconspicuous manner as is possible.

(p) Lawn Furnishings. No bird baths, frog ponds, flag poles, lawn sculpture, artificial plants, bird houses, rock gardens, or similar types of accessories and lawn furnishings are permitted on any home site without prior approval of the Architectural Control Committee.

(q) Lighting. All exterior lighting shall be consistent with the character established in Berkeley Park and be limited to the minimum necessary for safety, identification, and decoration. Exterior lighting of buildings for security and/or decoration shall be limited to concealed up lighting or down lighting. No color lens or lamps are permitted.

Section 17. Animals. No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. All pets shall be kept inside the residence except when being walked with a leash. No structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot.

Section 18. Water Supply. No individual water supply system shall be permitted on any Lot without the prior written approval of the Architectural Control Committee. If such approval is given, such system must be located, constructed and equipped in accordance with the requirements, standards and recommendations of federal, state and local public health authorities, and all necessary approvals of such system as installed shall be obtained from such authorities at the sole cost and expense of the Owner of the Lot to be served by such system.

Section 19. Trees and Shrubs. No trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level, no flowering trees or shrubs, nor any evergreens on any Lot may be removed without the prior approval of the Architectural Control Committee unless located within ten (10) feet of the approved site for a dwelling or within the right-of-way of driveways or walkways. This provision shall not apply to damaged or dead trees and trees which must be removed due to an emergency.

Section 20. Building Construction Standards.

(a) Exterior Materials. Finish building materials shall be applied consistently to all sides of the exteriors of buildings. Exterior materials shall be brick approved by the Architectural Control Committee. No simulated brick or stone shall be permitted ***unless approved by the ACC***. In addition, no vinyl or aluminum fascia, soffit, siding or porch ceiling material shall be permitted.

(b) Exterior Colors. Finish colors shall be applied consistently to all sides of the buildings. Color selections shall be harmonious with each other and with natural materials, and shall be compatible with colors of the natural surrounding and other adjacent property. All exterior wood, including decks, balconies, galleries, banisters, etc., must be painted to match the trim color or shall be complimentary to the building exterior.

(c) Exterior Trim and Decoration. Exterior window and door trim and similar decorations shall all be of the same color and materials, unless otherwise approved, and shall be either of the same material as exterior walls or directly compatible. Fascia, gutters and down

spouts shall blend in and be directly compatible with the architectural detail of the exterior walls. Reflective glass is prohibited.

(d) Appurtenances. All exterior mechanical equipment including, but not limited to, transformers, vents, air conditioning compressors, pool pumps, meters, etc., shall be concealed from view by walls of the same material and color as the building or by an opaque landscaping screen. No solar energy devices shall be allowed.

(e) Roofs. Roofing materials must be a minimum of a 30-year architectural dimensional shingle with colors of weathered wood, slate blend, or charcoal gray. Roof pitch must be 8/12 or higher. Metal roofing, slate or simulated slate roofing will be approved subject to being architecturally adaptable and subject to Architectural Control Committee approval.

(f) Window Treatments. All interior window treatment such as drapes and blinds shall have a solid light colored appearance from the exterior and are subject to approval by the Architectural Control Committee. In addition, window screens will not be allowed on any window facing the street.

Section 21. Landscaping and Open Space Standards.

(a) Site Design and General Landscaping Concept. The architectural design and the site planning of Berkeley Park Subdivision is intended to evoke the appearance of a turn of the century architecturally planned neo-classical community. Building setbacks, site amenities and landscape improvements for each individual Lot as well as the entire community are intended to create an overall feeling of unity, consistency and harmony. The community atmosphere will be created by requiring the consistent use of materials and architectural styles described herein as well as disallowing fences and walls that define individual lots. The guidelines and restrictions described herein are intended to maintain the design intent of the developer and sustain the attractive aesthetic appearance of the community. A Landscape Architect will assist the developer and the homeowner with the siting of the buildings, landscape designs for each home grounds, location and design of walkways, driveways, outdoor entertainment areas, and other features outside the home as desired by the owner.

(b) Landscaping design and minimum expenditures for new construction will be at the discretion of the ACC.

(c) Any home site which shall have been altered from its natural state, shall be landscaped according to plans approved by the Architectural Control Committee. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material. Landscaping as approved by the Architectural Control Committee shall be installed no later than thirty (30) days following completion of any building with weather permitting.

(d) Landscaping and Site Improvements. Landscaping and site beautification is required within certain areas of each lot. In keeping with the desire to maintain a generally consistent community appearance, some restrictions will apply.

(e) Front Yards. The front part of the Lot is typically divided into two areas: the public area including the front wall, sidewalk, curb, and landscape areas between which will have landscape designed by the Developer's landscape Architect, and the private areas between the house foundation and the front walk. Landscaping is required in this area, but it must be designed and installed in a manner that is consistent with the rest of the subdivision. A minimum of six (6) large shade trees of which no less than four (4) to be located in the front yard and along the side of the main dwelling, additionally three (3) small flowering trees, and a planting bed coverage of approximately one-third (1/3) of the front area is required. Shade trees must have a minimum ten (10) feet of height and six (6) feet of spread. Appropriate credit toward trees and landscaping minimums may be granted for any existing trees that remain undisturbed and in suitable condition subsequent to construction. Additionally, each Lot shall have installed street scape trees installed along the subdivision's street frontage.

(f) Side Yards. These areas are located parallel to the house and side property lines. Plantings in this area must not restrict access/movement between front and rear property areas.

(g) Rear Property Line Area/Interior Lots 50-85 Only. The following paragraph applies to Lots 50-85 only. In order to develop a sense of neighborhood openness, a restricted planting zone will be maintained on each side of the rear property line for a distance of 15 feet from the rear property line in the direction of the house wall/front property line. Plantings may include deciduous shade and/or flowering trees placed in a manner to block specific sight lines, so long as they do not create a solid visual screen or physical barrier between lots. Hedges, fence row type screen planting and rows of evergreen trees may not be planted in these areas.

(h) Backyard Area/Interior For All Lots. The following paragraph applies to all Lots. Landscaping in this area refers to that portion of the Lot from the primary rear wall line of the house back toward the rear property line for a distance of 35 feet. In this area, additional privacy screen plantings for windows, porches, decks, swimming pools and spas and other activity areas may be planted with the approval of the Architectural Control Committee. Decks, swimming pools and spas, additional patios, pavement or outdoor structures may only be built in this area of each lot.

(i) Sod. All front yard and side yard areas within each home site not covered with pavement, buildings, shrubs or ground cover shall be completely sodded. Sod shall extend to the rear corner on both sides of each dwelling. All front, side and rear yards on lots 1, 14, 27, 28, 32, 39, 49, 58, 70, 73 and 85 shall be sodded.

(j) Mulch. All areas within homesite not covered with pavement, buildings, shrubs, mulch, or ground cover or sod shall be covered with three (3) inches deep of mulch.

(k) Irrigation. Automatic sprinkler systems are required for complete coverage of all front, side and rear yards. Automatic sprinkler system coverage shall also include the landscaping located between the subdivision sidewalks and the curbs throughout the subdivision.

Section 22. Sidewalks, Walkways, Patios, Decks. The developer-approved Landscape Architect will provide design consultation and plans for sidewalks and patios as part of the services for the remainder of the Lot. Special design requests such as swimming pools, spas, fountains, or the extraordinary features will become part of the scope of the work if requested by the homeowner, but will be paid for separately by the Lot Owner.

Section 23. Garbage Service. All homeowners in Berkeley Park are to hire the same company to perform garbage service In order to minimize the number and frequency of garbage removal vehicles in the neighborhood. The Board of Directors will keep current contact information for the selected garbage service. The Board of Directors will confirm annually which service is to be used.

ARTICLE XI

Insurance

The Board, or its duly authorized agent, shall obtain such insurance policies upon the Common Area and/or Area of Common Responsibility as the Board deems necessary or desirable in its sole discretion. The Association shall be a named insured on all insurance policies. In addition, the Board may obtain other appropriate insurance to protect members of the Board and any committees appointed by the Board.

ARTICLE XII

General Provisions

Section 1. Enforcement.

(a) The Association, the Architectural Control Committee, or any Owner, shall have the right to enforce, by and proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Architectural Control Committee or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(b) The Architectural Control Committee shall have the right of abatement in all cases where an Owner of a Lot shall fail to take reasonable steps to remedy a violation or breach of any restriction contained in this Declaration within twenty (20) days after the certified mailing of written notice of such violation or breach. The right of abatement means the right of the Architectural Control Committee, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation or breach exists, and to take such action or actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation or breach, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions. Further, the Architectural Control Committee, the Association, the Developer or any Owner may: (1) prosecute proceeding at law for the recovery of damages against those violating or attempting to violate the declaration of covenants and

restrictions, and, or (2) maintain a proceeding in equity against those so violating or attempting to violate any covenants or restrictions, for the purpose of preventing or enjoining all of any such violations or attempted violations, and/or to have any such violation removed from the Lot or cured.

(c) The remedies contained in this section shall be construed as cumulative of all other remedies now or hereafter provided by law. If the Association, the Architectural Control Committee, the Board or any other person or persons owning a Lot shall successfully prosecute in law or equity an action pursuant to this or any other enforcement section of these covenants or restrictions, then that party shall be entitled to receive its reasonable attorney's fees and the costs reasonably necessary to prosecute the case against the party violating the covenants and restrictions herein.

Section 2. Severability. If any provision of the Declaration, or any paragraph, subparagraph, article, section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the application of any such provision, paragraph, subparagraph, article, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

Section 3. Headings. The headings of articles and sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content or substance of such articles and sections.

Section 4. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, at the end of which period such covenants and restrictions shall be automatically extended for the successive periods of ten (10) years each, unless at least two-thirds (2/3) of the Owners at the time of the expiration of the initial period, or of any extension period, shall sign an instrument in which said covenants and restrictions are modified in whole or in part, which instrument is filed of record in the appropriate county.

Section 5. Rights and Obligations. Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in the Property or any portion thereof, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

Section 6. Notices. Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at his Lot or at such other address as hereinafter provided. Notices to the Developer shall be in writing and shall be addressed to Southern Traditions Partners, LLC, Post Office Box 366, Lenoir City, Tennessee 37771, or at such different address as disclosed in a

written notice of change of address furnished to all Owners. Any Owner may designate a different address for notices to him by giving written notice to the Developer. All notices to Owners and Developer shall be deemed delivered upon mailing by United States registered or certified mail, return receipt requested, or when delivered in person.

Section 7. Construction. ***The Owner of any Lot shall complete construction upon such Lot within three hundred and sixty five (365) days of breaking ground on the project, or will forfeit the \$3,000 construction bond to the Association. The owner of any Lot shall complete construction in compliance with approved plans and pass final inspection of the Architectural Control Committee, or will forfeit the \$3,000 construction bond to the Association.***

Section 8. Waiver and Modification.

(a) Developer hereby reserves the right in its absolute discretion at any time to annul, waive, change or modify any of the restricting conditions or covenants contained herein as to any part of Berkeley Park, and shall have further the right before a sale to change the size of or locate or relocate any of the lots, parcels, streets, or roads shown on any of the plats of Berkeley Park. Further, the Developer may amend these covenants and restrictions for the purpose of curing any ambiguity or inconsistency between the provisions contained herein.

(b) Declaration. Further, this Declaration may be amended at any time and from time to time by the Developer if the Developer is the owner of any real property then subject to this Declaration or by an agreement signed by at least seventy-five percent (75%) of the Owners of Lots; provided, however, such amendment by the Owners shall not be effective unless also signed by Developer, if Developer is the owner of any real property then subject to this Declaration. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Every purchaser or grantee of any interest in any real property made subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees that this Declaration may be amended as provided in this Section.

Section 9. Assignment or Transfer. Any or all of the rights and powers, titles, easements and estates reserved or given to Developer in this Declaration may be assigned to any one or more corporations or assigns which will agree to assume said rights, powers, duties and obligations and carry out and perform the same. Any such assignment or transfer shall be made by appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing its acceptance of such rights and powers, and such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by Developer and Developer shall thereupon be released there from.

Section 10. Additional Lots. Developer reserves the right to add additional lots to Berkeley Park Subdivision. The Developer reserves the right to change the plat of Berkeley Park Subdivision to annex additional lots into the subdivision. Any lots annexed into Berkeley Park

Subdivision shall be bound by this Declaration of Covenants and Restrictions and shall have all rights and responsibilities under these Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, Southern Traditions Partners, LLC, has caused this instrument to be executed and its name to be signed by its Chief Manager and Secretary and attested by a notary pursuant to their authority this _____ day of _____, 1999.