

This Instrument Prepared By:
Douglas R. Pyne, Esq.
WARING COX, PLC
50 N. Front Street, Suite 1300
Memphis, Tennessee 38103

KD 9118

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

FLEMING GARDENS SUBDIVISION

THIS DECLARATION is made, published and declared this 26th day of April, 2000, by Fleming Gardens, L.P., a Tennessee limited partnership, (the "Declarant") and any and all persons, firms or corporations hereinafter acquiring any of the within described Property.

WHEREAS, the Declarant is the fee simple owner of a certain tract of real property in Shelby County, Tennessee, which is more particularly described in Exhibit "A" attached hereto; and

WHEREAS, the Declarant has caused to be prepared a plan for the development of the Property, to be known as "Fleming Gardens Subdivision" into residential lots, together with certain common areas for the use, benefit and enjoyment of the owners of the lots in common with each other; and

WHEREAS, the Declarant has caused or will cause a final plat of Section A of the Property to be filed in the Register's Office of Shelby County, Tennessee (sometimes referred to herein as the "Plat"); and

WHEREAS, it is to the benefit, interest and advantage of the Declarant, each Owner of a Lot, and each and every person or other entity hereafter acquiring any interest in the Property that certain covenants, restrictions, easements, assessments and liens governing and regulating the use and occupancy of the Property be established, fixed, set forth and declared as covenants running with the land.

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

ARTICLE I.
DEFINITIONS

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

Section 1. "Association" shall mean and refer to Fleming Gardens Subdivision Homeowners Association, Inc., a nonprofit, non-stock corporation incorporated under the laws of the State of Tennessee, its successors and assigns. The Association's Charter and Bylaws are attached hereto marked Exhibits "B" and "C", respectively, and made a part hereof.

Section 2. "Declarant" shall mean Fleming Gardens, L.P. with offices at 5264 Poplar Avenue, Memphis, Tennessee 38119, its successors and assigns.

Section 3. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereto, as this Declaration may, from time to time, be amended in accordance with its terms.

Section 4. "Lot" shall mean and refer to the plots of land designated with Numbers 1 through 94, inclusive, as shown on the Plat, together with such other numbered plots of land shown on any future recorded subdivision plats of future sections of Fleming Gardens Subdivision. For all purposes hereunder, it shall be understood and agreed that Declarant shall be the Owner of all of the Lots, save and except only those particular Lots which Declarant conveys in fee simple title by recordable deed from and after the date hereof. Ownership of a Lot hereunder shall include an undivided pro rata interest in the Common Area owned by or to be conveyed to the Association.

Section 5. "Member" or "Members" shall mean and refer to every Person who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the owner of record whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, provided, however, that the purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

Section 7. "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 8. "Property" or "Properties" shall mean that certain tract of real property located in Shelby County, Tennessee and which is more particularly described in Exhibit "A" attached hereto, together with the real property contained within any future sections of Fleming Gardens Subdivision and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

9118

KD

Section 9. "Common Area" shall mean all portions of the Property and all improvements located thereon owned by or to be conveyed to the Association for the common use and enjoyment of the Members of the Association. The Common Area to be owned by or to be conveyed to the Association is to include common open space(s), a Private Park, storm water detention basins, storm drainage system not included in public storm drainage easements within Fleming Gardens Subdivision, and the areas denoted on the Plat and labeled C.O.S. A, C.O.S. B, C.O.S. C, C.O.S. D, C.O.S. E and C.O.S. F.

Section 10. "Improvements" shall mean the structures, walls, fences, pavement, plantings and other additions built or placed on the Lots. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within the Lot. In the event that, by reason of construction, settlement, reconstruction or shifting of the Improvements, any minor part of the Improvements reasonably intended for a particular Lot lies outside the boundary of that Lot, an easement of use shall apply thereto in favor of the Lot to be benefitted.

ARTICLE II.
PROPERTY

Section 1. Property Subject to Declaration. That certain real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration located in the Town of Collierville, Shelby County, Tennessee, and which is more particularly described in Exhibit "A" attached hereto and made a part hereof and that certain real property contained within any future sections of Fleming Gardens Subdivision.

Section 2. Storm Drainage Systems. The storm drainage systems located in common open spaces and the area designated "Reserved for Storm Water Detention" on Lot 1 within Fleming Gardens Subdivision which have not been dedicated to the City of Collierville or any other governmental body shall remain private storm drainage systems. The maintenance and repair expenses for private storm drainage systems located in common open spaces and the area designated "Reserved for Storm Water Detention" on Lot 1 shall be paid for by assessments levied by the Association upon the Owners as provided herein. Notwithstanding anything herein to the contrary, this paragraph shall not apply to those storm drainage easements designated and shown on the Plat as "public" easements.

ARTICLE III.
THE ASSOCIATION

Section I. Members. Every Person, as defined, who is an Owner of a Lot shall be a Member of the Association, as defined, provided, however, that anyone who holds such interest solely as security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot within Fleming Gardens Subdivision. Qualification as Owner of a Lot shall be the sole qualification for membership.

Section 2. Voting Rights. The voting rights of a Member shall be appurtenant to the ownership of a Lot, each Owner of a Lot shall be entitled to one (1) vote for each Lot, except the Declarant, which shall be entitled to fifteen (15) votes for each Lot owned by it. After the expiration of six (6) years from the date of the conveyance of the first Lot from Declarant to a purchaser, Declarant shall only be entitled to one (1) vote for each Lot still owned by it.

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

Section 4. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each matter which is put to a vote. The vote of the Members representing fifty-one percent (51%) majority of the total votes cast, in person or by proxy (provided a quorum exists), shall decide any matter brought before such meeting for a vote, unless the matter is one upon which, by express provisions of statute, the corporate Charter, this Declaration, or the Bylaws, a different vote is required, in which case such express provision shall govern and control. The vote for any Lot which is owned by more than one person may be exercised by any one of them present at any such meeting unless any objection or protest by any other owner of such Lot is noted at such meeting. In the event all of the co-owners of any Lot who are present at any meeting of the Members are unable to agree on the manner in which the vote for such Lot shall be cast on any particular matter, then such vote shall not be counted for purposes of deciding that matter. No Member shall be eligible to vote, either in person or by proxy, or be elected to the Board of Directors, or remain a member of the Board of Directors, who is more than sixty (60) days delinquent in any payment due the Association as shown on the books or management accounts of the Association.

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

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

KD 9118

**ARTICLE IV.
PROPERTY RIGHTS**

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

(a) The right of the Association to suspend any enjoyment rights of any Member for any period during which assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(b) The right of the Association to provide for, maintain, regulate and establish easements upon any Common Area within the Fleming Gardens Subdivision;

(c) The right of the Association, in accordance with its Charter and Bylaws, to borrow money for the purpose of improving the Common Area which the Association is to maintain;

(d) 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, transfer or mortgage shall be effective unless an instrument agreeing to such dedication or transfer has been signed by Members entitled to cast two-thirds (2/3) of the votes hereof has been recorded, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance of such dedication or transfer or vote on such dedication or transfer.

Section 2. Additional Building. No additional buildings for permanent occupancy shall be constructed on the Common Area. This shall not prohibit the easements described above.

Section 3. Easements for Decorative Wall and/or Fence, Signs, Drainage Equipment and Systems. Declarant hereby reserves for itself and the Association an easement over and upon Lots 1, 9, 18, 83 through 92, and 94 for the purpose of erecting, maintaining, repairing or replacing any of the following items related to the enhancement or maintenance of the adjacent Common Area: landscaping, a decorative wall and/or fence, brick columns, mechanical equipment, an electrical system, lights, signage and an irrigation system, if Declarant chooses to erect or install any of same. The Owners of the Lots noted in this Section 3 of Article IV shall not modify or relocate any of the items located or installed on a Lot by the Declarant or the Association without the prior written consent of the Association.

**ARTICLE V.
MAINTENANCE AND REPAIR**

Section 1. Association Responsibilities. The Association shall provide and pay for all maintenance and expenses for the Common Area, including any portion of the storm drainage

system and/or detention system that may occur in Common Areas and/or on Lot 1 (even if included in the public storm sewer easements), decorative wall and/or fence, sidewalks, signage, common open space(s), electrical systems, lights, irrigation systems, and Landscape Areas and Easements, and the landscaping of the Common Area. The Association may also contract for the maintenance of the individual yards on each Lot in Fleming Gardens Subdivision. The real property taxes on the Common Area, if any, shall also be paid for by the Association.

Section 2. Individual Lot Owners.

(a) Interior and Exterior Maintenance. Each Owner of a Lot shall be responsible for all interior and exterior maintenance, painting, repairs and upkeep on his Lot and the improvements thereon. In order to retain the appearance of the development, no exterior maintenance, repairs or replacements which substantially alter the exterior appearance of a building or improvement on a particular Lot shall be commenced unless permission is obtained from the Architectural Control Committee, as hereinafter defined.

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

ARTICLE VI.
ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) Annual Assessments; (2) Special Assessments for capital improvements, including sewer maintenance; and (3) Emergency Assessments (The Annual Assessments, Special Assessments and Emergency Assessments shall hereafter sometimes be collectively referred to as the "Assessments"). All such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which the Assessments are made. The Assessments charged to a particular Lot shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessments fell due.

Section 2. Annual Assessments and Carrying Charges of the Association. Each Member shall pay to the Association an annual sum (hereinafter sometimes referred to as "Annual Assessments") equal to the Member's proportionate share (based upon each Member's Lot divided by the total number of Lots shown at that time on all of the then current recorded plat(s) of Fleming

KD
9118

Gardens Subdivision) of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:

- (a) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any; and
- (b) The amount of all taxes and assessments levied against the Association or upon any Property which it may own or which it is otherwise required to pay, if any; and
- (c) The cost of extended liability insurance and the cost of such other insurance as the Association may effect; and
- (d) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements; and
- (e) The estimated cost of repairs, maintenance and replacements of the storm drainage system, walls, fences, and landscaping in the Common Areas and any other item the Association may be responsible for; and
- (f) The cost of yard maintenance should the Association elect to contract for every Lot.

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

Section 3. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy in any assessment year a special assessment or assessments, applicable to that year only (hereinafter referred to as a "Special Assessment"), for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement for which the Association is specifically responsible or for such other purposes as the Board of Directors may consider necessary, provided that the Special Assessment shall have the assent of the Members representing two-thirds (2/3) of the total number of votes eligible to be cast. Notice of a meeting of the appropriate Members shall be sent to all Members at least ten (10) days but not more than thirty (30) days in advance of such meeting, which notice shall identify the purpose of the meeting.

Section 4. Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of Members or damage to the property of

Members, the Board of Directors, acting pursuant to this section, may declare an emergency assessment in such amount payable at such time as the Board of Directors, in its sole discretion, shall deem necessary (hereinafter referred to as an "Emergency Assessment"). The Emergency Assessment, except for the amount and time of payment, shall be governed by all other provisions of this Declaration. The Emergency Assessment shall be borne pro rata by all Lots and paid by all Members of the Association. The Board of Directors shall be fully protected and not liable for any mistake in judgment hereunder if the Emergency Assessment is made in good faith.

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

Any Assessments levied pursuant to this Declaration or any installment thereof, which are not paid within ten (10) days of when due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Tennessee and, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the Board may fix. The Association may bring an action at law against the Member personally obligated to pay the Assessments or foreclose the lien against the Lot or Lots subject to prior mortgages or deeds of trust upon the Lot or Lots, then belonging to the Member; in either of which events the Association may collect from the Member interest, costs and reasonable attorney's fees. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

For the purpose of enforcing the lien of any unpaid and delinquent Assessments, each Lot Owner grants the Board of Directors of the Association irrevocably the power to sell his Lot at public outcry to the highest and best bidder for cash; provided, however, that the Board of Directors is authorized to make such a public sale if and only if the sale is made subordinate to any prior recorded mortgage or deed of trust upon the Lot. The Association is hereby authorized to take any and all courses of action available to them for collection of Assessments which the laws of the State of Tennessee allow. Any such sale shall be made after first advertising the sale of the Property for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of Shelby, State of Tennessee, giving notice of the time and place of such sale and by written notice of the time

and place of such sale to the Owner of the Lot at his last known address. Any sale of a Lot to enforce a lien for delinquent and unpaid Assessments shall be free from equity of redemption, including the statutory right of redemption, homestead, and dower and all other exemptions, all of which are expressly waived by the Lot Owner; and any such sale and the Hen enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied: first, to the payment of expenses of protecting the Property and the expenses of litigation, attorneys fees, and sales commissions; second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust (unless sold subject to the mortgage or deed of trust); third, to the payment of all amounts due the Association under the terms of the Declaration and Bylaws; and fourth, the balance, if any, to the Lot Owner whose Lot is sold, and his assigns. Upon any default in the payment of any Assessments, the Board of Directors shall have the right to all rents, issues, and profits from the Lot in default and shall have the right to all rents, issues, and profits from the Lot in default and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession in the same manner as a mortgagee entering into possession following default. The Association may enforce its lien by whatever means available, including the power of sale granted herein or filing suit for foreclosure in the appropriate court.

All rights, remedies, and privileges granted to the Board of Directors or a Lot Owner, pursuant to any terms, provisions and covenants or conditions of the Declaration and Bylaws shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to the party by the Declaration and Bylaws or at law or in equity.

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

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

Section 7. Priority of Lien. The Hen established by this Article, shall have preference over any other assessments, liens, judgments or charges of whatever nature, except as follows:

- (a) General and special assessments for real estate taxes on a Lot; and

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

Section 8. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any Assessments levied pursuant to this Declaration upon any Lot shall be subordinate to and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over all other mortgages) upon such interest made in good faith and for value received, provided, however, that such subordination shall apply only to Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a foreclosure or any other proceeding in lieu of foreclosure. Any delinquent Assessments which are extinguished pursuant to the foregoing provisions may be reallocated and assessed to all Owners as a common expense, including the purchaser at such sale of the Lot from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessments which the lien, if any, claimed shall have the same effect and be enforced in the same manner as provided herein.

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

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

Section 10. Uniform Value of Assessment. Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 11. Date of Commencement of Annual Assessment: Due Dates. The Annual Assessments provided for herein shall commence as to all Lots upon written notification by Declarant or its agent. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Until December 31, 2002, the maximum Annual Assessment shall be Sixty and No/100 Dollars (\$60.00) per Lot per year. Until December 31, 2002, the Declarant shall have the sole authority to determine whether an Annual Assessment shall be levied. After December 31, 2002, the Annual Assessment shall be fixed by the Board of Directors as set out in Section 2 of this Article VI.

ARTICLE VII.
ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. An “Architectural Control Committee” (hereinafter referred to as the “ACC”) is hereby established. The initial ACC shall consist of three (3) persons appointed by Declarant. These three individuals shall serve for a period of five (5) years, or until they resign from the ACC by written notice to the Board of Directors of the Association. Upon the later to occur of; (a) the expiration of five (5) years from the date hereof or (b) three (3) years after the recordation of the plat for Section C of Fleming Gardens Subdivision, or upon the earlier resignation of the ACC, the Board of Directors of the Association shall then appoint the ACC, which shall be composed of three (3) or more individual Lot Owners. The affirmative vote of a majority of the membership of the ACC shall be required to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein. This provision may not be amended for a period of five (5) years without the consent of Declarant.

Section 2. Approvals Necessary, Rules of Committee and Remedies for Violation. With the exception of those placed by Declarant, no structure of any kind or nature or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the Lots within Fleming Gardens Subdivision, nor shall any existing structure, fence or barrier upon any Lots be altered in any way which substantially changes the exterior appearance (which includes but is not limited, to changes in paint color and reroofing) thereof, nor shall there be any additions, attachments, or deletions to improvements, nor shall there be any substantial changes in landscaping, without the written consent of the ACC; nor shall any new use be commenced on any Lot unless plans and specifications (including a description of any proposed new use) shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be required by the ACC, but in any event shall include:

- (1) A site plan of the Lot showing the location (including proposed front, rear and side setbacks) of all structures, fences, barriers or other improvements, and the location of all parking spaces and driveways on the Lot; and
- (2) A complete set of working construction drawings and exterior specifications, including front, rear and side elevation, showing the nature, exterior, color scheme, kind, shape, height and materials of the improvements; and
- (3) Grading and landscaping plans of the particular Lot showing all existing trees and identifying any trees which are proposed to be removed; and

The ACC may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on the Lots including, without limitation, the exterior

KD 9118

lighting and planting and may issue statements of policy with respect to approval or disapproval of the architectural styles or details or other matters which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the ACC at any time and no inclusion in or omission from or amendment of any such rule or statement shall be deemed to bind the ACC to approve or disapprove any feature or matter subject to approval or to waive the exercise of the ACC's discretion as to any such matter. No change of policy shall affect the finality of any Lot of any plans or specifications previously submitted to and approved by the ACC; however, such approval shall not be deemed a waiver by the ACC of its discretion to disapprove such plans or specifications or any features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot. Approval of any plans and specifications relating to any Lot, however, shall be final as to that Lot and approval may not be revoked or rescinded thereafter; provided that the plans and specifications as approved and any condition attached to any such approval have been adhered to and complied with in regard to all structures, fences, or barriers on the uses of the Lot in question.

Neither Declarant, the ACC (or its individual members), its representatives or committees, nor any architect or agent thereof, shall be responsible in any way for defects in any plans or specifications submitted, revised or approved in accordance with the provisions contained herein, nor for any structural or other defects in any work done according to such plans and specifications.

In the event the ACC fails to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the same shall be deemed to have been approved as submitted and no further action shall be required.

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

If fifteen (15) days after the notice of such violation, the Owner or Owners of the Lot upon which the violation exists shall not have taken reasonable steps towards the removal or termination of the same, the Association by its officers or directors shall have the right to take such steps as may be necessary to extinguish such violation, and the costs thereof shall be a binding personal obligation of the Owner as well as a lien upon the Lot in question upon the recording of the lien with the Office of the Register of Shelby County, Tennessee.

Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by the ACC, the ACC shall, upon written consent of the Owner thereof, issue a letter of compliance in form suitable for recordation, identifying the structure and

the Lot on which the structure is to be located and stating that the plans and specifications, location of the structure and the use or uses to be conducted thereon have been approved and that the structure complies therewith. Preparation and recording of such letter shall be at the expense of the Owner or Owners of such Lot. Any letter of compliance issued in accordance with the provisions of this paragraph shall be prima facie evidence of the facts therein stated and, as to any purchaser or encumbrancer in good faith and for value or as to any title insurer, such letter shall be conclusive evidence that all structures and the use or uses described therein comply with all the requirements of these restrictions and all other requirements as to which the ACC exercises any discretionary or interpretive powers.

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

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

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

Should a request to the ACC come from a member of the ACC, the other members of the ACC shall select a disinterested Lot Owner to take the place of the ACC member making the request for the purpose of making a determination on such request.

ARTICLE VIII. RESTRICTIVE COVENANTS

Section 1. Residential Use. Lots shall not be used except for private residential purposes.

Section 2. Minimum Home Size. For Lots which are less than Ninety feet (90') wide at the front building setback line, the minimum finished and heated floor area of all residences, exclusive of porches and garages, shall be 1,800 square feet for one (1) story homes, and 2,100 square feet for one and one-half (1 ½) story and two (2) story homes and, in addition, the ground floor of one and one-half (1 ½) story and two (2) story homes must have a minimum of 1,400 square feet of heated and finished floor area, exclusive of porches and garages. For Lots which are more than Ninety feet (90') wide at the front building setback line, the minimum finished and heated floor

KD 9118

area of all residences, exclusive of porches and garages, shall be 2,500 square feet for one (1) story homes, and 3,000 square feet for one and one-half (1 ½) story and two (2) story homes and, in addition, the ground floor of one and one-half (1 ½) story and two (2) story homes must have a minimum of 1,800 square feet of heated and finished floor area, exclusive of porches and garages. Notwithstanding the foregoing, Declarant may reduce the minimum home size requirement.

Section 3. Setback Lines. Building setback lines shall be no less than those required under applicable governmental regulations and shall be in accordance with the Final Plan and Conditions for Fleming Gardens Subdivision as shown on the Plat.

Section 4. Requirements, Prohibited Uses and Nuisances. In order to provide for a congenial occupation of the residences within Fleming Gardens Subdivision and to provide for the protection of the values of the entire development, the use of the residences shall be in accordance with the following provisions:

(a) The Property is hereby restricted to residential dwellings for residential use. All buildings or structures erected upon the Property shall be of new construction, and no buildings or structures shall be moved from other locations onto the Property. No buildings or structures other than single family houses and accessory outbuildings shall be constructed. All plumbing and gas vents shall be placed on rear or side yard side of the roof slope. The mail boxes for all Lots shall be identical to each other and in the form approved by the ACC. All roofing on residences located on Lots which are more than Ninety feet (90') wide at the front building setback line shall be Dimensional shingles.

(b) Each residence on a Lot which is less than ninety feet (90') wide at the front building setback line must have a fully enclosed garage for not less than two (2) nor more than (3) cars. Residences on Lots which are more than ninety feet (90') wide at the front building setback line may have up to four (4) car garages. Where garage structures are located entirely in front of a house, the garage door(s) shall be perpendicular to the street and the drive shall make a ninety degree turn into the garage. No garage may be left open to a street for a period of time longer than reasonably necessary for a car to leave or enter. Additionally, on Lots which are more than ninety feet (90') wide at the front building setback line, no garage may have a door(s) directly facing any street, except corner lot garages which shall have an individual door for each car and each individual door shall not be larger than nine feet (9') wide or eight feet (8') high.

(c) Wood windows shall be required on all buildings, except that premium aluminum-clad or vinyl-clad wood windows or other synthetic windows designed to look like wood windows may be utilized as specifically approved by the ACC. "Greenhouse" style windows may be used on rear or side of residences if screened so as not to be readily visible from the street adjoining the Lot.

- (d) All fences must be constructed from brick and/or wrought iron and/or wood. Any wood-only fences facing the street must have the “good” fence side facing the street and, on Lots which are more than Ninety feet (90') wide at the front building setback line, all fences must have brick corner columns. No fence, wall, hedge or other separating device shall be erected nearer to a street than the building setback line or be constructed beyond the front building setback line (corner lots have two front yards). No fence, wall, hedge or other separating device shall interfere with the free flow of surface water drainage. Chain link fences are only permitted for dog pens in rear yards that are completely enclosed by an opaque perimeter fencing higher than the dog pen fence. All dog pens must be completely screened by fencing from all other Lots and from the streets adjoining the Lot. All fences, walls, hedges or other separating device, regardless of location, shall be no more than seven feet (7) tall.
- (e) All outbuildings (including storage buildings, storage sheds and playhouses) on a Lot must be screened from other Lots and the street adjoining the Lot by a six foot (6') high solid fence. Equipment, air conditioning units, electrical transformers, and wood piles shall be screened by adequate planting or fencing so as not to be readily visible from other Lots and the street adjoining the Lot. All garbage cans shall be completely screened by adequate planting or fencing from view of the other Lots and the street adjoining the Lot. No structures of a temporary character, trailer, basement, tent, shack, garage, bam or other building shall be used on any portion of the Property at any time as a residence, either temporarily or permanently.
- (f) No recreational vehicles or commercial vehicles including, but not limited to, boats, boat trailers, house trailers, camping trailers, motorcycles, or similar type items shall be kept other than in the garage with the garage door closed.
- (g) Without prior written approval and the authorization of the ACC, no exterior television or radio antennas of any sort shall be placed, allowed, or maintained upon any portion of the improvements located upon the Property nor upon any structure situated upon the Property. Satellite dishes up to twenty-four inches (24") in diameter shall only be allowed upon the Property if approved by the ACC, which may require screening as it may desire.
- (h) All satellite dish receiving antennas, radio antennas, swimming pools, accessory buildings and structures shall be installed in accordance with the Town of Collierville Ordinances and additionally approved by the ACC, whose criteria may be more restrictive than the Town of Collierville Ordinances.
- (i) No building material of any kind or character shall be placed or stored upon any Lot until the Owner is ready to commence construction of improvements on the

KD 9118

Lot. Building materials shall not be placed or stored in the street or between the curb and property lines.

(j) Prior to the occupancy of any residence on a Lot, each owner shall install or plant in the front yard at least two (2) trees with a caliper of at least two inches (2") (as measured 16" above the ground) and shall block sod the entire front and side yards (flower beds and all heavily landscaped areas excluded) of the Lot.

(k) The Owner of each Lot shall be responsible and held liable for maintaining the Lot, whether or not any improvements have been made thereon, in a neat and attractive manner and all grass, weeds, vegetation and debris on each Lot shall be kept mowed and cleared at regular intervals by the Owner. Trees, shrubs, vines, debris and plants which die shall be promptly removed from each Lot. All rubbish, trash, litter or garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. Until a residence is constructed on a Lot, and in the event the Owner of the Lot shall refuse or neglect to comply with the terms of this subsection, the Declarant, at its option and discretion, may mow and have dead trees and debris removed from the Lot and the owner of the Lot shall be obligated to reimburse the Declarant for the cost of such work.

(l) No obnoxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners within Fleming Gardens Subdivision.

(m) No above-ground swimming pools will be permitted on any Lots. No clothesline may be maintained on any Lot.

(n) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of the Lots, except that dogs, cats or other common, urban, domestic household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. All pets shall, at all times, be confined within residences or fenced areas or restrained by leash.

(o) No advertising signs billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Property except one (1) "for rent" or "for sale" sign of not more than five (5) square feet per Lot. The Property shall not be used in any way or for any purposes which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof. No business activity of any kind whatever shall be conducted in any building or in any portion of the Property; provided, however, the foregoing covenants shall not apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of Declarant, its agents and assigns, during the development, construction and sales period of Lots in Fleming Gardens Subdivision.

KD 9118

- (p) Vegetable gardening will be allowed only in rear yards and must not be visible from any street adjoining the Lot on the Property, Shelby Drive or Fleming Road.
- (q) There shall be no violation of any rules which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the Bylaws authorized to adopt such rules.
- (r) Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof and all easements, restrictions and covenants set out in the Plat. No lot may be further subdivided. No portion of any Lot may be conveyed except with the prior written approval of the ACC.
- (s) No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.
- (t) All references in this Declaration to the screening of certain features from the street and other Lots shall be interpreted based on normal views at an elevation equal to six (6) feet above the ground level at the feature being screened.
- (u) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain, during the period of the sale of the Lots upon such portion of the premises as Declarant deems necessary, such facilities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the sale of the Lots, including, but without limitation, a business office, storage area, construction yard, marketing and "for sale" signs, model units, and sales office.

Section 5. Additional Deed Restrictions. Declarant reserves unto itself the right to impose additional and separate restrictions at the time of sale of any of the Lots sold by the Declarant, which restrictions may not be uniform and may differ from Lot to Lot.

ARTICLE IX. COMMON EASEMENTS

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

Section 2. Easement for Utilities, Etc. Declarant hereby reserves for itself and its designees (including without limitation, the County of Shelby, the Town of Collierville, the Memphis Light, Gas and Water Division, or any utility) blanket easements upon, across, over and under all of the Common Area and to the extent shown on any plat over the Lots for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, security, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, drainage and electricity. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Property described on Exhibit "A".

ARTICLE X.
INSURANCE AND CASUALTY LOSSES

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

Premiums for all insurance on the Common Area shall be common expenses of the Association. The policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost of the improvements. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance.

Cost of insurance coverage obtained by the Association for the Common Area and other improvements for which the Association is responsible shall be included as an Assessment as defined in Article VI.

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

- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

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

(iv) that any “other insurance” clause in any policy exclude individual Owners' policies from consideration; and

(v) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

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

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

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

Each individual Owner shall furnish a certificate of insurance to the Association or its manager.

ARTICLE XI.
RIGHT TO EXPAND

Declarant reserves the right, without the necessity of approval or permission from any party, to expand the Property in one or more increments to a total not to exceed 254 Lots, The size of the additional lots and the size, style and other characteristics of the improvements located on the additional lots may not be the same as the original Lots and improvements located thereon.

ARTICLE XII.
MORTGAGEE'S RIGHTS

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

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

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

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

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

The consent of at least sixty-seven percent (67%) of the votes and the consent of the Declarant, as long as its owns any land subject to this Declaration, and the approval of eligible

9118

KD

holders of first mortgages on individual Lots to which at least fifty-one percent (51%) of the votes subject to a mortgage appertain, shall be required to materially amend any provisions of the Declaration, Bylaws, or Charter of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following: (i) voting; (ii) assessments or assessment liens, not including a subordination of the lien; (iii) reserves for maintenance, repairs, and replacement of the Common Area; (iv) insurance or fidelity bond; (v) rights to use of the Common Area; (vi) responsibility for maintenance and repair of the Property; (vii) boundaries of any residential Lot; (viii) imposition of any right of first refusal or similar restrictions of the right of any Owner to sell, transfer or otherwise convey his Lot; (ix) any provisions included in the Declaration, Bylaws, and Charter of Incorporation which are for the express benefit of the holders, guarantors or insurers of first mortgages on residential units, which provisions do not set out a required number of votes to amend the particular provision.

ARTICLE XIII.
GENERAL PROVISIONS

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

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES THE RIGHT FOR A PERIOD OF TEN YEARS FROM THE DATE HEREOF TO UNILATERALLY AMEND THIS DECLARATION, THE GENERAL PLAN OF SUBDIVISION, THE AMENITIES SHOWN THEREIN, AND COMMON OPEN SPACES AND THEIR FEATURES TO MEET THE REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, WHETHER FEDERAL, STATE OR LOCAL, TO MEET THE REQUIREMENTS OF ANY MORTGAGE LENDER OR FOR ANY REASON THAT THE DECLARANT DEEMS ADVISABLE FOR THE ORDERLY DEVELOPMENT OF THE FLEMING GARDENS SUBDIVISION, INCLUDING WITHOUT LIMITATION THE WAIVER OF ANY PRIVATE BUILDING SETBACK LINE VIOLATIONS. THIS PROVISION MAY NOT BE AMENDED FOR A PERIOD OF TEN YEARS WITHOUT THE CONSENT OF DECLARANT.

Section 2. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last

known address of the person who appears as a Member on the records of the Association at the time of such mailing.

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

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

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

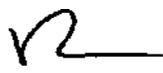
Section 6. Gender. Etc. Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

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

FLEMING GARDENS, L.P., a
Tennessee limited partnership

By: Loeb-Sklar, LLC,
a Tennessee limited liability company, its
general partner

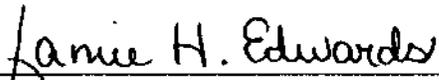
By:  
Mike Ritz, Manager

STATE OF TENNESSEE COUNTY OF SHELBY

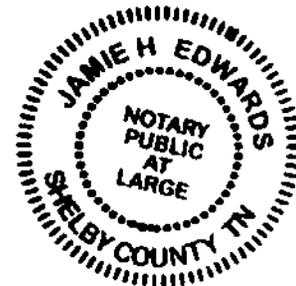
Before me, a Notary Public in the aforesaid State and County, duly commissioned and qualified, personally appeared Mike Ritz, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager of Loeb-Sklar, LLC, a limited liability company and the general partner of Fleming Gardens, L.P., the within named bargainor, a limited partnership, and that he as such Manager of Loeb-Sklar, LLC executed the foregoing instrument for the purposes therein contained by personally signing the name of Fleming Gardens, L.P., by signing the name of Loeb-Sklar, LLC, its general partner, by himself as such Manager of Loeb-Sklar, LLC.

WITNESS my hand and seal, at office this

26th day of April, 2000.


Notary Public

My Commission Expires: My Commission Expires June, 2000

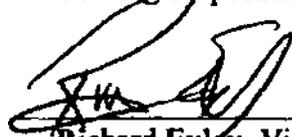


KD 9118

JOINDER OF MORTGAGEE

Nashoba Bank, the holder of a Deed of Trust recorded at Instrument No. JN 4345 in the Register's Office of Shelby County, Tennessee upon the property described in Exhibit "A" of this Declaration of Covenants, Conditions and Restrictions, joins in submitting the property to the Declaration of Covenants, Conditions and Restrictions; provided, however, that the Deed of Trust remains prior to any liens created by the Declaration of Covenants, Conditions and Restrictions.

NASHOBA BANK, a Tennessee
banking corporation

By 
Richard Exley, Vice Pres dent

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in the aforesaid State and County, duly commissioned and qualified, personally appeared Richard Exley, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Vice President of Nashoba Bank, the within named bargainor, a Tennessee banking corporation, and that he as such Vice President executed the foregoing instrument for the purposes therein contained by personally signing the name of Nashoba Bank, by himself as such Vice President.

WITNESS my hand and seal, at office this

19th day of April, 2000.


Notary Public

**My Commission
Expires: 7/9/02**

My Commission Expires:

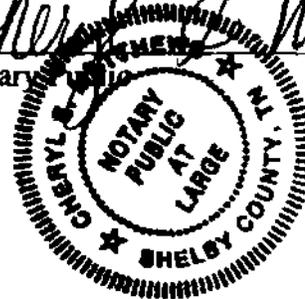


Exhibit A

SURVEY OF PART OF THE PORTER DEVELOPMENT COMPANY PROPERTY BEING PART OF PARCEL I. ALL OF PARCEL II. AND PART OF PARCEL III AS RECORDED IN INSTRUMENT NUMBER GR 0164 IN THE SHELBY COUNTY REGISTER'S OFFICE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE CENTERLINE OF COLLIERVILLE ROAD SAID POINT BEING THE NORTHWEST CORNER OF COLLIERVILLE FARMS PHASE I AS RECORDED IN PLAT BOOK 170, PAGE 65, IN SAID REGISTER'S OFFICE; THENCE SOUTH 02 DEGREES 01 MINUTES 43 SECONDS WEST ALONG THE WEST LINE OF SAID COLLIERVILLE FARMS PHASE I AND A PROJECTION THEREOF A DISTANCE OF 2329.24 FEET TO A POINT IN THE PROPOSED CENTERLINE OF SHELBY DRIVE; THENCE SOUTH 87 DEGREES 58 MINUTES 16 SECONDS EAST ALONG SAID CENTERLINE A DISTANCE OF 431.50 FEET TO THE POINT OF BEGINNING; THENCE ALONG SAID CENTERLINE THE FOLLOWING DESCRIBED COURSES; SOUTH 87 DEGREES 58 MINUTES 16 SECONDS EAST A DISTANCE OF 352.89 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTWARDLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1400.00 FEET. A-CHORD BEARING OF NORTH 86 DEGREES 29 MINUTES 12 SECONDS EAST. A CHORD DISTANCE OF 270.42 FEET AND AN ARC LENGTH OF 270.84 FEET TO A POINT OF TANGENCY; THENCE NORTH 80 DEGREES 56 MINUTES 40 SECONDS EAST A DISTANCE OF 302.83 FEET TO A POINT OF CURVATURE; THENCE EASTWARDLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1400.00 FEET. A CHORD BEARING OF NORTH 83 DEGREES 48 MINUTES 34 SECONDS EAST. A CHORD DISTANCE OF 139.92 FEET, AND AN ARC LENGTH OF 140.01 FEET TO A POINT IN THE WEST LINE OF THE BILLY C. HENDRIX PROPERTY. AS RECORDED IN INSTRUMENT NUMBER CS 0812. IN SAID REGISTER'S OFFICE; THENCE SOUTH 02 DEGREES 05 MINUTES 22 SECONDS WEST ALONG SAID WEST LINE A DISTANCE OF 10.68 FEET TO A FOUND IRON PIN BONG THE NORTHWEST CORNER OF THE SHELDON N. GREEN. TRUSTEE. PROPERTY. AS RECORDED IN INSTRUMENT NUMBER BM 4747. IN SAID REGISTER'S OFFICE; THENCE SOUTH 01 DEGREES 43 MINUTES 58 SECONDS WEST ALONG THE WEST LINE OF SAID GREEN PROPERTY A DISTANCE OF 385.02 FEET (CALL-385.42') TO A FOUND IRON PIN BEING THE SOUTHWEST CORNER OF SAID GREEN PROPERTY; THENCE SOUTH 87 DEGREES 33 MINUTES 51 SECONDS EAST ALONG THE SOUTH LINE OF SAID GREEN PROPERTY A DISTANCE OF 1128.49 FEET TO POINT IN THE CENTERLINE OF FLEMING ROAD (FOUND IRON PIN 25.83 WEST); THENCE SOUTH 02 DEGREES 29 MINUTES 42 SECONDS WEST ALONG SAID CENTERLINE A DISTANCE OF 386.70 FEET TO A POINT BEING THE SOUTHEAST CORNER OF THE TINA RENEE ROWE PROPERTY. AS RECORDED IN INSTRUMENT NUMBER EW 7993 IN SAID REGISTER'S OFFICE; THENCE NORTH 87 DEGREES 33 MINUTES 27 SECONDS WEST ALONG THE NORTH LINE OF SAID ROWE PROPERTY A DISTANCE OF 1122.20 FEET TO A FOUND IRON PIN BEING THE NORTHWEST CORNER OF SAID ROWE PROPERTY; THENCE SOUTH 01 DEGREES 33 MINUTES 45 SECONDS WEST ALONG THE WEST LINE OF SAID ROWE PROPERTY AND A PROJECTION THEREOF A DISTANCE OF 392.24 FEET (CALL-389.46) TO A FOUND IRON PIN BEING THE NORTHWEST CORNER OF THE GEORGE L. & LILLIE M. PICKETT PROPERTY AS RECORDED IN DEED BOOK 5274 PAGE 386. IN SAID REGISTER'S OFFICE. THENCE SOUTH 01 DEGREES 32 MINUTES 39 SECONDS WEST ALONG THE WEST LINE OF SAID PICKETT PROPERTY A DISTANCE OF 389.12 FEET (CALL-391.85') TO A POINT BEING THE NORTHWEST CORNER OF THE ROBERT HUMPHREYS PROPERTY AS RECORDED IN INSTRUMENT NUMBER DR 6646, IN SAID REGISTER'S OFFICE; THENCE SOUTH 01 DEGREES 23 MINUTES 45 SECONDS WEST ALONG THE WEST LINE OF SAID HUMPHREYS PROPERTY AND A PROJECTION THEREOF A DISTANCE OF 389.83 FEET TO A POINT BEING THE SOUTHWEST CORNER OF THE ROBERT HUMPHREYS PROPERTY AS RECORDED IN INSTRUMENT NUMBER AP 4383, IN SAID REGISTER'S OFFICE; THENCE SOUTH 01 DEGREES 20 MINUTES 12 SECONDS WEST ALONG THE WEST LINE OF THE ROBERT HUMPHREYS PROPERTY AS RECORDED IN INSTRUMENT NUMBER N6 8540, IN SAID REGISTER'S OFFICE. A DISTANCE OF 1002.23 FEET TO A FOUND 1" PIPE WITH METAL CAP IN THE NORTH LINE OF PARCEL 2 OF THE FRANCIS' HINTON FAMILY. LP. PROPERTY. AS RECORDED IN INSTRUMENT NUMBER HB 1878. AND ALSO BEING THE SOUTHWEST CORNER OF SAID HUMPHREYS PROPERTY; THENCE NORTH 88 DEGREES 22 MINUTES 51 SECONDS WEST ALONG SAID NORTH LINE AND A PROJECTION THEREOF A DISTANCE OF 760.88 FEET (CALL-760.97') TO A FOUND IRON PIPE AND CONTINUING FOR TOTAL DISTANCE OF #1521.85 FEET TO A POINT IN THE EAST LINE OF PARCEL 5 OF SAID HINTON PROPERTY AND ALSO BEING THE NORTHWEST CORNER OF THE WILLIE A. WESLEY PROPERTY AS RECORDED IN INSTRUMENT NUMBER L1 8393, IN SAID REGISTER'S OFFICE; THENCE NORTH 02 DEGREES 10 MINUTES 03 SECONDS EAST ALONG THE EAST LINE OF SAID PARCEL 5 OF THE HINTON-PROPERTY AND THE EAST LINE OF THE BRYAN PROPERTY AS RECORDED IN NOTE BOOK 89. PAGE 02. IN SAID REGISTER'S OFFICE AND THE EAST LINE OF THE W.T. PRICE. LP. PROPERTY AS RECORDED IN INSTRUMENT NUMBER EV 9615REGISTER'S OFFICE, A DISTANCE OF 1882.34 FEET TO A POINT IN SAID EAST LINE OF PRICE; THENCE SOUTH 87 DEGREES 58 MINUTES 16 SECONDS EAST A DISTANCE OF 431.50 FEET TO A POINT; THENCE NORTH 02 DEGREES 01 MINUTES 43 SECONDS EAST A DISTANCE OF 979.80 FEET TO THE POINT OF BEGINNING AND CONTAINING 4,338,630 SQUARE FEET.

25

Exhibit "B"
CHARTER
OF
FLEMING GARDENS SUBDIVISION
HOMEOWNERS ASSOCIATION, INC.

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

1. The name of the corporation is Fleming Gardens Subdivision Homeowners Association, Inc.
2. This corporation is a mutual benefit corporation.
3. This corporation is not a religious corporation.
4. (a) The complete address of the corporation's initial registered office is Waring Cox, PLC, 50 North Front Street, Suite 1300, Memphis, Shelby County, Tennessee, 38103.

(b) The name of the initial registered agent, to be located at the address listed in 4(a), is Jerald H. Sklar.
5. The name and complete address of the incorporator is:

Douglas R. Pyne Waring Cox, PLC
50 North Front Street, Suite 1300
Memphis, Tennessee, 38103.
6. The complete address of the corporation's principal office is:

5264 Poplar Avenue Memphis,
Tennessee 38119
7. This corporation is a nonprofit corporation.
8. The corporation will have members.

9. The corporation may be dissolved with the assent given in writing and signed by not less than sixty-seven percent (67%) of the members. Upon dissolution of the corporation, other than incident to a merger or consolidation, the assets of the corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this corporation was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.
10. No director shall be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director, except as otherwise provided in subparagraph (A), (B), and (C) of T.C.A. Section 48-52-102(bX3). The foregoing shall not eliminate or limit the liability of a director for any action or omission occurring prior to the date when this paragraph becomes effective.
11. The Bylaws of the corporation may state a higher or lower quorum requirement for Members than is set forth in T.C.A. Section 48-57-203(a).

WITNESS my hand this day of 2000.

Douglas R. Pyne, Incorporator

Exhibit C
BYLAWS
OF
FLEMING GARDENS SUBDIVISION
HOMEOWNERS ASSOCIATION, INC

ARTICLE I

Section 1. Name. The name of this corporation is FLEMING GARDENS SUBDIVISION HOMEOWNERS ASSOCIATION, INC (the “Association”). The Association’s principal place of business is 5264 Poplar Avenue, Memphis, Tennessee 38119. The Association may have such other offices within or without the State of Tennessee as the Board of Directors or the Members may from time to time designate.

ARTICLE II

Section 2. Applicability. These Bylaws and each provision thereof shall be applicable to all Lots and Members, as these terms are defined in the Declaration of Covenants, Conditions and Restrictions (the “Declaration”) for the residential planned development known as Fleming Gardens Subdivision.

ARTICLE III

Section 1. Eligibility. The Owner or Owners of a Lot, who have become such in compliance with all of the requirements and conditions contained in the Declaration, including these Bylaws, shall be entitled to attend and vote at all meetings of the Association. Fleming Gardens, L.P., a Tennessee limited partnership, (the “Declarant”) the developer of Fleming Garden Subdivision, shall be considered the Owner of each Lot which the Declarant has not yet sold. Ownership of a Lot shall be the sole qualification for membership in the Association.

Section 2. Voting Rights. The Owner or Owners of a Lot shall be entitled to one (1) vote for each Lot owned at all meetings of the Association, except for the Declarant, which shall be entitled to fifteen (15) votes for each Lot owned by it. After the expiration of six (6) years from the date of the conveyance of the first Lot from Declarant to a purchaser, Declarant shall only be entitled to one (1) vote for each Lot still owned by it. Where two or more persons own a Lot, the vote allocated to that Lot shall be cast by the one authorized by such two or more Owners, and in the event of failure of such authorization, no vote shall be recorded for that Lot. Where only one

of two or more Owners of a Lot is present in person at a meeting, such one shall be presumed to be authorized by all Owners of the Lot and shall be entitled to cast the vote with respect for that Lot. Where one person or a group of persons owns more than one Lot, such person or group shall be entitled to cast one (1) vote for each Lot owned.

ARTICLE IV

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

Section 2. Annual Meetings. The annual meetings of the Members of the Association shall be held at 7:00 P.M. on the second Tuesday in October of each year beginning in 2000. At such meeting there shall be elected by secret written ballot of the Members a Board of Directors in accordance with the requirements of Section 5 of Article V of these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

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

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

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

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

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

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

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

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

- (a) Roll call and certificate of proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of Officers, if any.
- (e) Reports of committees, if any.

- (f) Unfinished business.
- (g) New business.
- (h) Election or appointment of inspectors of election.
- (i) Election of directors.

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

ARTICLE V

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

Section 2. Initial Directors. The initial Directors shall be elected by the Declarant and need not be Members of the Association. The names of the Directors who shall act as such from the date upon which the Declaration is recorded in the Register's Office of Shelby County, Tennessee, until the first annual meeting of the Members or until such time as their successors are duly chosen and qualified are as follows:

Robert E. Loeb
Mike Ritz
Ronald L. Sklar

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

To provide for:

- (a) Care and upkeep of the roads, sewers, utilities, wall, fence, common area, and any other properties charged to the care of the Association, including establishing reserves for repairs or replacements.

- (b) Establishment and collection of assessments and/or carrying charges from the Members and for the assessment and/or enforcement of liens therefor in a manner consistent with law and the provisions of these Bylaws and the Declaration.
- (c) Designation, hiring and/or dismissal of the personnel necessary for the good working order of the Fleming Gardens Subdivision and to provide services for the community in a manner consistent with law and the provisions of these Bylaws and the Declaration.
- (d) Promulgation and enforcement of such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of Fleming Gardens Subdivision, all of which shall be consistent with law and the provisions of these Bylaws and the Declaration.
- (e) Election of an Architectural Control Committee (the "ACC").

Section 4. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Association to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

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

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

Section 7. Removal of Directors. At a regular meeting, or special meeting duly called for such purpose, any Director may be removed with or without cause by the affirmative vote of the majority of the entire membership of record and a successor may be elected at that time to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall

be given an opportunity to be heard at the meeting. The term of any Director who becomes more than sixty (60) days delinquent in the payment of any assessments and/or carrying charges due the Association shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 6 of this Article.

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

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

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

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

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

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

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

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

ARTICLE VI.

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

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

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

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

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

KD 9118

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

Section 7. Treasurer. The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VII

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

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

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

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

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

ARTICLE VIII.

Section 1. Management and Common Expenses. The Association, acting by and through its Board of Directors, shall manage, and operate the affairs of the Association and, for the benefit of the Lots and the Owners thereof, shall enforce the provisions hereof and shall pay out of the common expense fund herein and elsewhere provided for, the following:

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

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

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

ARTICLE IX.

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

Section 2. Books and Accounts. Books and accounts of the Association shall be kept under the direction of the Treasurer in accordance with good accounting practice. The same shall include books with detailed accounts, in chronological order, of receipts and of the expenditures affecting Fleming Gardens Subdivision and its administration and shall specify the maintenance and repair expenses incurred. That amount of any assessment required for payment of any capital expenditures of the Association shall be credited upon the books of the Association to the "Paid-in- Surplus" account as a capital contribution by the Members.

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

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

Section 5. Execution of Association Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the Association

by such officers, agents, or other persons as are from time to time so authorized by the Board of Directors.

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

ARTICLE X.

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

ARTICLE XI.

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

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

ARTICLE XII.

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

e
l
s
e
w
h
e
r
e

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

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

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

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

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

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

E:\USERS\DRP\WORKFILE\FLEMING\SUBDIVIS\Declar12.wpd

9118

KD

		52
4- VALUATION TN	N/A	
MORTGAGE TAX	N/A	
TN TRANSFER TAX	N/A	
FEE		156.00
		2.00
REGISTER' S FEE	N/A	
WALK	N/A	
		158.00

SHtI
REGISTER OF DEEDS
00 APR 27 PM

PAGE COUNT:

STATE OF TENNESSEE, COUNTY of SHELBY
SHELBY