

Declaration of Covenants, Conditions & Restrictions
Mooreland Estates Home Owner's Association
Brentwood, Tennessee
Book 255, Pages 331 through 365 - 1/19/76
(amended 1983, 1997, 2005, 2007)

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
A Planned Unit Development (P.U.D.)**

AMENDED AS OF MAY 15, 2007

THIS DECLARATION made on the date hereinafter set forth by the owner-occupants of residences, hereinafter referred to as Members.

WHEREAS, the members acquired ownership of property located in Williamson County, Tennessee, more particularly described in the Plan of record of Plat Book 4, page 98, Registers Office for Williamson County. A description of the property contained within Section I, Mooreland Estates, Phase I, on said Plat is attached hereto as Exhibit "A."

WHEREAS, said property includes all of the property covered by a Master Deed of record in Book 211, page 236, said Register's Office creating a condominium pursuant to Tennessee Code Annotated, Sections 64-2711 and 64-2712,

WHEREAS, This development was converted from a condominium development to a planned unit development thereby voiding, vacating, and superseding all of the provisions of the Master Deed heretofore described and all By-Laws, Rules and Regulations of the Condominium heretofore adopted and recorded in Book 255 beginning on page 331, while at the same time ratifying the general plan for development as set forth in Plat Book 4, page 98, said Register's Office; and

WHEREAS, the Members desire such changes and for that purpose join in the execution of this Declaration of Covenants, Conditions and Restrictions thereby voiding all previous versions of the Declarations, Covenants and Restrictions; and

NOW, THEREFORE, the Members hereby declare that the Private Residences (as that term is hereinafter defined) shall be held, sold and conveyed, subject to the easements, covenants, conditions, restrictions, liens and charges contained herein, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Private Residences. These easements, covenants, restrictions, liens, charges and conditions shall run with the Private Residences and shall be binding on all parties having or acquiring any right, title or interest in the Residences or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

SECTION 1. "Association"

"Association" shall mean and refer to Mooreland Estates Home Owners Association, Inc., a Tennessee non-profit corporation, its successors and assigns.

SECTION 2. "Property"

AMENDED AS OF AUGUST 9, 1983
"Property" shall mean and refer to the property referred to above as shown in the Revised Final Plat recorded in the Register's Office for Williamson County in Book 8, page 58, (hereinafter referred to as the "Plat").

SECTION 3. "Common Area"

AMENDED AS OF AUGUST 9, 1983
AMENDED AS OF MAY 15, 2007
"Common Area" shall mean all those portions of the Property shown on the Plat referred to herein above, excluding portions of the Property dedicated to the public, and excluding those portions designated as Private Residences as hereinafter defined, which are owned by the Association for the common use and enjoyment of the members of the Association. "Common Areas" shall be further defined as all property within the Association except where a residence sits. There shall extend from each residence a three-foot (3') invisible boundary where the owner is responsible for maintenance of landscaping. Members desiring to make improvement(s) to the common area outside the three foot (3') invisible boundary are required to receive prior approval from the HOA Board. Installation, maintenance and removal of any such improvement(s) are the responsibility of the member and their successors.

SECTION 4. "Private Residence"

AMENDED AS OF AUGUST 9, 1983
AMENDED AS OF MAY 15, 2007
"Private Residence" as hereinafter used in this Declaration shall mean and refer to any designated dwelling unit shown above on the Plat of the Property referred to herein above.

SECTION 5. "Owner"

"Owner" shall mean and refer to the record owner whether one or more persons or entities, of a fee simple title to any Private Residence or unit, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 6. "Declarant"

Section 6 shall be stricken in its entirety.

SECTION 7. "Articles" or "Charter"

AMENDED AS OF MAY 15, 2007
"Articles" or "Charter" shall mean the Charter of Incorporation of the Association, as said Charter is amended from time to time.

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SECTION 8. "Board"

"Board" shall mean the Board of Directors of the Association.

SECTION 9. "By-Laws / General Rules and Regulations"

"By-Laws" shall mean the By-Laws of the Association as such By-Laws may be amended from time to time. "General Rules and Regulations" are the set of rules adopted by the board as necessary addressing a specific issue that would not be appropriate for inclusion in the Declarations.

SECTION 10. "Improvements"

AMENDED AS OF MAY 15, 2007

"Improvements" shall mean buildings, garages, roads, driveways, walkways, parking areas, fences, walls, covered patios, porches, elevated porches, sun decks, balconies, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every kind, nature and description.

SECTION 11. "Private Driveways"

AMENDED AS OF MAY 15, 2007

"Private Driveways" shall mean and refer to all of those portions of the Common Area providing vehicular access to and from the Private Residences that are not defined as public streets. Public streets are defined as Tartan Drive, Clearfield Drive, Flowerwood Court, Sunberry Court, Vineland Drive, Vineland Court, Volunteer Drive, Volunteer Court, Old Fowlkes Drive, Rosewood Drive, Rosewood Court, Reed Drive, Reed Court, Amanda Court, and Tartan Crest Court. Driveways are classified as paved or improved accesses from public streets that have either rises or cuts in street curbing which allow vehicle crossings without difficulty and terminate in a residence's garage.

SECTION 12. "Declaration" or "this Declaration"

AMENDED AS OF MAY 15, 2007

"Declaration" or "this Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions, as the same may be amended from time to time, together with any and all supplementary declarations which may be recorded from time to time pursuant to the provisions of Article X, Section 4 herein.

SECTION 13. "Manager"

"Manager" shall mean and refer to the professional managing agent, whether corporate or individual, retained by the Association on contract and charged with the maintenance and upkeep of the Common Area and the additional maintenance areas. The Association shall retain a Manager at all times during the term of this Declaration.

SECTION 14. "Association Sub-Section" Locations

AMENDED AS OF MAY 15, 2007

The Association is divided into three (3) Phases:

- Phase I is defined as the 48 Residences located west of Rosewood Court and south of Tartan Drive. The Residences on Rosewood Court are included in Phase I during scheduled painting cycles so as to even the painting cost of all three phases.
- Phase II is defined as the 31 Residences located north of Tartan Drive and west of Old Fowlkes Drive.
- Phase III is defined as the 70 Residences located outside of the boundaries of Sub-Sections I and II.

AMENDED AS OF MAY 15, 2007

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SECTION 15. "Non-Structural" elements of a Residence where Association is Responsible

Among the services provided to members of the Association are certain exterior, non-structural maintenance services for their Residence. For the purposes of this Declaration, non-structural maintenance services shall include:

- routinely scheduled exterior painting and caulking; routinely scheduled roof shingle and flashing maintenance and re-roofing (not including decking, roof vents, and structure);
- routine gutter and downspout maintenance and repair;
- routine exterior window shutter maintenance;
- basic pest control service;

The Association is not responsible for structural repairs of any kind to member's Private Residence.

Throughout this Declaration, the following supplemental definitions shall apply:

Structural - A term applied to those members in a structure that carry an imposed load in addition to their own weight. (R.S. Means Illustrated Construction Dictionary. ISBN 0-87629-219-8. © 1991)

Party Wall - A common wall between two living units. (R.S. Means Illustrated Construction Dictionary. ISBN 0-87629-219-8. © 1991)

Knee Wall - A wall that shortens the span of the roof rafters acting as a knee brace, in that it separates the rafters at some intermediate point along their length. (R.S. Means Illustrated Construction Dictionary. ISBN 0-87629-219-8. © 1991)

Fascia - A board that is nailed vertically to the ends of roof rafters; sometimes supports a gutter. (Dictionary of Architecture and Construction. 2nd Edition McGraw-Hill ISBN 0-07-026888-6. © 1993.)

AMENDED AS OF MAY 15, 2007

SECTION 17. "Retaining Walls"

The Association maintains only four (4) retaining walls recognized as part of the common area. Two retaining walls are located between the residences east of Vineland Drive and west of Volunteer Court and between the residences east of Volunteer Court and west of Old Fowlkes Drive. The remaining two retaining walls are between Sunberry Court and Vineland Court and between the Tennis Courts and the Swimming Pool. No extension wall attached to a residence shall be considered as common area.

ARTICLE II (stricken by amendment 8/9/83)

Annexation
9, 1983

AMENDED AS OF AUGUST

ARTICLE II shall be stricken in its entirety.

SECTION 1. Annexation of Additional Property.

SECTION 2. Method of Annexation.

SECTION 3. Contents of Supplementary Declaration.

ARTICLE III

The Association

SECTION 1. Organization.

The Association is a non-profit Tennessee corporation, charged with the duties and invested with the powers prescribed by law and set forth in the By-Laws, and this Declaration. The By-Laws shall not, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency the provisions of this Declaration shall prevail. The officers and the directors of the Association shall be required to be members of the Association. The Board of Directors of the Association, and such officers as the Board may elect or appoint, shall conduct the affairs of the Association, in accordance with this Declaration, and By-Laws, as the same may be amended from time to time.

SECTION 2. Membership.:

(a) Qualifications.

Each owner of a Private Residence, shall be a member of the Association, and shall be entitled to one membership for each Private Residence owned. Ownership of a Private Residence shall be the sole qualification for membership in the Association.

(b) Member's Rights and Duties.

The Association membership of each owner shall be appurtenant to the Private Residence giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Private Residence, and then only to the transferee of title to said Private Residence. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Private Residence shall operate automatically to transfer the membership in the Association appurtenant thereto, to the new owner thereof.

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SECTION 3. Voting.

(a) Number of Votes.

AMENDED AS OF MAY 15, 2007

The Association shall have one class of voting membership: Members shall be all owners and shall be entitled to one vote for each Private Residence owned. When more than one person is the owner of a Private Residence, all such persons shall be Members. The vote for such Private Residence shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Private Residence.

(b) Joint Owner Disputes.

The vote for each such Private Residence must be cast as a unit, and fractional votes shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any owner or owners cast a vote representing a certain Private Residence, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other owners of the same Private Residence. In the event more than one vote is cast for a particular Private Residence, none of said votes shall be counted and said votes shall be deemed void.

(c) Cumulative Voting.

In any election of the members of the Board, every owner entitled to vote at such an election shall have the right to cumulate his votes and give one candidate or divide among any number of candidates, a number of votes equal to the number of directors to be elected multiplied by the number of votes which such owner is otherwise entitled to cast, pursuant to the Declaration and the By-Laws. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

SECTION 4. Duties of the Association.

In addition to the powers delegated to it by its Articles, and without limiting the generality thereof, the Association shall have the obligation to perform each of the following duties;

(a) Operation and Maintenance of Common Area.

AMENDED AS OF MAY 15, 2007

To operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of the Common Area, including but not limited to any recreation area, together with all easements for operation and maintenance purposes and for the benefit of the Association or its members over and within the Common Area; to keep all improvements of whatever purpose from time to time located thereon in good order, condition, and repair.

(b) Additional Maintenance Obligations.

In addition to the operation, maintenance and management duties of the Association set forth in paragraph (a) of this Section 4, the Association shall maintain, repair and care for or provide for the maintenance, care and repair of the following portions of the Properties in a state of good order, condition and repair:

- (1) The exterior landscaping and walkways upon each Private Residence, with the exception of landscaping located within enclosed patios or within other enclosed

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areas. The Association shall also provide exterior maintenance upon each Private Residence which is subject to assessment hereunder as follows: painting, maintenance and non-structural repair of exterior building surfaces as the Board shall deem necessary and proper, including gutters, downspouts, replacement of trim, caulking and other repairs to roof covers and other miscellaneous repairs of a non-structural nature. Such exterior maintenance shall not include glass surfaces, screens, patio covers, and landscaping and walkways located within enclosed patios and other enclosed areas. The balance of the Private Residences and the improvements located thereon shall be maintained by the individual owners of the particular Private Residence involved. If the need for exterior maintenance and repair by the Association as required by this paragraph is caused by the willful or negligent conduct or act of an owner, his family, guests, invitees, or other persons using or occupying his Private Residence with his express or implied permission, the cost of such repair or maintenance shall be assessed to such owner and shall be due and payable thirty (30) days from the date of notice thereof, such assessment to be collected and enforced as provided for by Article IV of this Declaration. Such assessment shall not require the approval of all or any portion of the members provided, however, that any owner against which any such assessment is levied shall be entitled to notice, a hearing and an opportunity to do the corrective work required as provided by Section 2 of Article V hereof, in connection with non-compliance with the provision of Section 1(c) of Article V hereof prior to any assessment being levied against such owner in accordance with the provisions of this paragraph. For the purpose solely of performing the exterior maintenance upon each Private Residence required by this paragraph, the Association, through its duly authorized employees or agents shall have the right, after reasonable notice to the owner, to enter upon any Private Residence at reasonable hours on any day except Sunday.

AMENDED AS OF MAY 15, 2007

- (2) Prior approval of the Board is required for any exterior modification to a Private Residence.

(c) Water and Other Utilities.

To acquire, provide and/or pay for, water, sewerage, garbage disposal, electrical, telephone, gas and other necessary utility services for the common area. The Association shall also acquire and pay for such utility services as are necessary to perform its maintenance obligations as set forth in paragraph (b) above.

(d) Taxes and Assessments.

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

(e) Insurance.

To obtain from reputable insurance companies qualified to do business in the State of Tennessee, and maintain in force at all times the following policies of insurance:

AS AMENDED ON NOVEMBER 18, 1997

AMENDED AS OF MAY 15, 2007

- (1) Fire and extended coverage on all improvements located upon the property, the Private Residences, and the Common Area, the amount of such insurance to be not less than one hundred (100%) of the full insurable replacement cost value of all such improvements (as determined not less than annually in conjunction with the

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insurance company issuing such policy). The Board shall use its best efforts to obtain and maintain in full force at all times insurance coverage adequate to provide sufficient funds to pay the costs of reconstruction substantially in accordance with the original plans and specifications therefore in event of destruction or damage to any such improvements from fire or other casualty covered by extended coverage.

(2) Comprehensive public liability insurance insuring the Board, the Association, and the members of the Association, against liability to, and claims of, the public, the members of the Association and any other person, firm or entity, occurring in or upon the common area or the Additional Maintenance Areas, or based upon, incident to or arising out of (1) the ownership or use of the common area, or (2) the activities of the Association. Such coverage shall provide for cross-liability endorsement wherein the right of named insured shall not be prejudiced with respect to actions by them against another named insured. Limits of liability on such coverage shall be as follows: Not less than \$300,000.00 per person and \$500,000.00 per occurrence with respect to bodily injury or death; not less than the Fair Market Value (FMV) with respect to property damage.

The Association shall maintain an Ordinance and Law addendum to the master insurance policy to ensure that the proceeds from any insurance claim or settlement are sufficient to repair/rebuild any structure in the Association within the current federal, state, and local regulations. The Board will exercise due diligence in obtaining the most cost-effective insurance policy available. The individual members of the Association are responsible for the deductible as established by the Association's insurance policy.

AS AMENDED ON NOVEMBER 18, 1997

(3) Such other insurance including Workmen's Compensation insurance to the extent necessary to comply with applicable law and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or maintain in full force at all times fire and extended coverage insurance on all of the personal property located in improvements on their Building Sites Private Residence, however, the Association as provided in paragraph (1) herein above will obtain and maintain a blanket insurance policy of fire and extended coverage covering all structures in an amount equal to one hundred (100%) percent of the full insurable replacement cost of such structure and improvements, such policy to be paid for out of monthly assessments collection by the Association.

(f) Rule Making.

To make, establish, promulgate, amend and repeal the Association Rules.

(g) Enforcement of Restrictions and Rules.

To perform such other acts, whether or not expressly authorized by this Declaration as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association Rules.

SECTION 5. Powers and Authority of the Association.

The Association shall have all of the powers of a non-profit corporation organized under the laws of the State of Tennessee, subject only to such limitations upon the exercise of such powers as are expressly set forth in the By-Laws, or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration, and the By-Laws, and to do and perform

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any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association including without limitation:

(a) Assessments.

To levy assessments on the owners of Private Residences, and to enforce payment of such assessments, all in accordance with the provisions of this Declaration.

(b) Right of Enforcement.

The Association shall also have the power and authority from time to time in its own name, on its own behalf, or on behalf of any owner or owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and to enforce, by mandatory injunction or otherwise, all of the provisions hereof.

(c) Easements and Rights-of-Way.

To grant and convey to any third party easements and rights-of-way in, on, over or under the common area for the purposes of constructing, erecting, operating, or maintaining thereon, therein, or thereunder (1) overhead or under-ground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, hearing, power, telephone and other purposes, (2) public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and (3) any similar or quasi-public improvements or facilities.

(d) Employment of Agents.

AMENDED AS OF MAY 15, 2007

To employ the services of any person or corporation as manager, together with other employees, to, as may be directed by the Board, manage, conduct and perform the business, obligations and duties of the Association, and enter into contracts for such purpose. Such employees shall have the right to ingress and egress over the portions of the properties as is necessary for the purpose of performing such business, duties and obligations as directed by the Manager or Board. The contracted manager shall have the exclusive right to act as said manager, under contract with the Association until such time as that contract shall expire or be terminated.

SECTION 6. The Association Rules.

By a majority vote of the Board, the Association may, from time to time, adopt, amend and repeal such rules and regulations as it deems reasonable (the "Association Rules"). The Association Rules shall govern the use of any common area, including but not limited to any recreation area and the public streets, by the owners, by the families of the owners or by any invitee, licensee, lessee or contract purchaser of an owner; provided, however, that the Association Rules may not discriminate among owners and shall not be inconsistent with this Declaration or the By-Laws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each owner. In the event of any conflict between any such Association Rules and any of the other provisions of this Declaration, By-Laws, the provisions of such Association Rules shall be deemed to be superseded by the provisions of this Declaration, or the By-Laws, to the extent of such inconsistency. In the event of any conflict between the provisions of this Declaration and the provisions of the By-Laws of the Association, the provisions of this Declaration shall prevail.

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SECTION 7. Personal Liability.

No member of the Board or any committee of the Association, or any officer of the Association, or the manager, if any, shall be personally liable to any owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association, or any committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

SECTION 8. Exercise of Association Powers by Board.

The Board shall exercise for and on behalf of the Association all powers, duties and authority vested in or delegated to the Association and not otherwise requiring the consent or approval of the members of the Association or a portion of percentage thereof by other provisions of this Declaration, or the By-Laws.

ARTICLE IV

Covenant for Maintenance Assessments

SECTION 1. Creation of the Lien and Personal Obligation of Assessments.

Each Private Residence owned, hereby covenants, and each owner of any Private Residence by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, for each Private Residence owned, to pay to the Association: (1) Annual Assessments and (2) Special Assessments; such assessments to be established, made and collected as hereinafter provided. The Annual and Special Assessments, together with interest thereof, costs of collection thereof, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Private Residence against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of each person, firm or entity who was an owner of such Private Residence at the time when such assessment became due and payable. The personal obligation for delinquent assessments shall not pass to an owner's successors in title unless expressly assumed by them, but no such assumption shall relieve any owner personally obligated hereby for delinquent assessments from such owner's personal liability therefor.

SECTION 2. Purpose of Assessments.

Assessments levied shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the properties, the improvement, operation and maintenance of the common area and the additional maintenance areas and the performance of the duties of the Association as set forth in this Declaration.

SECTION 3. Annual Assessments.

AMENDED AS OF AUGUST 9, 1983

AMENDED AS OF MAY 15, 2007

ARTICLE IV, Section 3 shall be stricken in its entirety and replaced with the following:

Section 3 (a). Common Expenses. Each owner shall pay his proportionate share of the expenses of the administration and operation of the Common Areas and the Additional

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Maintenance Areas as hereinbefore defined and of any other expenses incurred in conformance with the Declaration or By-Laws (which expenses are herein sometimes referred to as "annual assessments"), including, but not limited to, the maintenance and repair thereof any and all replacements and additions thereto. Such proportionate share of the common expenses for each Owner shall be in accordance with the decisions entered by the Tennessee Court of Appeals for the Middle Section in the case styled THE FIFTH THIRD COMPANY V. MOORELAND ESTATES HOMEOWNERS' ASSOCIATION, ET AL, docket no. 81-160-II, (entered March 26, 1982) cert. den. August 30, 1982, affirming in part and reversing in part a decree and memorandum entered February 19, 1981, in case #14404, Chancery Court for Williamson County, which decisions are expressly acknowledged hereby and copies of which are appended hereto for reference as Exhibit "C." No lot owner shall be exempt from payment of his proportionate share of the common expenses by waiver or non-use or enjoyment of the Common Areas or by abandonment of his Private Residence. If any Owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof together after said Common Expenses become due and payable shall constitute a continuing lien on the Private Residence against which the assessment is made, and on the Owner's Membership interest in the Association. Each Owner shall be personally liable for his portion of each assessment made while he is the owner of the Private Residence.

(b) Mortgage and Deed of Trust Protection. The lien for assessments payable by an owner shall be subordinate to the lien of a recorded first mortgage or deed of trust on the interest of such owner, except for the amount of the proportionate share of common expenses which become due and payable from and after the date on which the mortgagee or beneficiary thereunder takes possession of the Private Residence encumbered thereby, accepts a conveyance of any interest therein (other than as security) or forecloses its mortgage or deed of trust. This subsection (b) shall not be amended, changed, modified or rescinded without prior written consent of all mortgagees and beneficiaries of record.

Any assessment not paid on a timely basis by a member within the specified time period will be addressed according to the Association Policy on Member Accounts with Outstanding Balances and the Association Policy on Agreed Payment Plans for Accounts with Outstanding Balances.

(c) This Section 3 shall be effective from the date of enactment, and shall apply only to mortgages and deeds of trust granted after the effective date hereof and shall not be construed to apply retroactively to mortgages or deed of trust falling within the definition of "prior deed of trust," as hereinafter made at Section 9 of this Article, which shall be in existence as of the effective date hereof or which have been foreclosed, extinguished or released prior to the effective date hereof.

SECTION 4. Special Assessments for Capital Improvements.

AMENDED AS OF MAY 15, 2007

In addition to the annual assessments authorized above, the Board may levy, during any calendar year, but in no event prior to the first annual meeting of the members of the Association, special assessments ("Special Assessments") applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, or unexpected repair or replacement of a capital improvement upon the common area, including the necessary fixtures and personal property related thereto; provided that any such assessment shall be approved by vote or written assent of two-thirds (2/3's) of members of the Association present, either in person or by proxy and entitled to vote at a

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meeting of the members of the Association called for such purpose at which a quorum is present.

SECTION 5. Notice and Quorum for Any Action Authorized under Sections 3 and 4.

Any action authorized under Sections 3 or 4 of this Article IV which requires the approval of the members of the Association, shall be taken at a meeting called for that purpose, at which a quorum is present. Such meeting shall be noticed and held in the same manner as required by the By-Laws for the holding and noticing of special meetings of the members of the Association and the quorum requirements therefore shall be the same as for a special meeting of the members as set forth in the By-Laws.

SECTION 6. Uniform Rate of Assessment.

Annual and Special Assessments must be fixed at a uniform rate for all Private Residences. Annual and Special Assessments shall be collected on a monthly basis in equal monthly payments, unless some other basis for collection is adopted by the Board. The annual assessment period shall commence on January 1 of each year, and terminate on December 31 of such year.

SECTION 7. Date of Commencement of Annual Assessments

Due Dates.

AMENDED AS OF MAY 15, 2007

The Board shall fix the amount of the annual assessment against each Private Residence at least thirty (30) days in advance of each annual assessment period (except the initial Annual Assessment period). Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates for annual assessments and special assessments shall be the first day of each month unless some other due date is established by the Board. The Board shall, upon demand, and for a reasonable charge not to exceed Ten (\$10.00) Dollars, furnish a certificate to persons requesting same signed by an officer of the Association, setting forth whether all assessments on a specified Private Residence whether annual or special have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

SECTION 8. Effect of Non-Payment of Assessments

Remedies of the Association.

AMENDED AS OF MAY 15, 2007

Each owner of any Private Residence, on becoming an owner of any Private Residence, is and shall be deemed to covenant and agree to pay to the Association each and every one of the assessments provided for in this Declaration; and agrees to the enforcement of all such assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each owner agrees to pay reasonable attorneys' fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said owner. Any assessment not paid when due shall be deemed to be delinquent. In addition to any other remedies herein or by law provided, the Board, or its authorized representative, may enforce the obligations of the owners to pay the assessments provided for in this Declaration, and each of them, in any manner provided by law or in equity, or without any limitation of the foregoing by either or both of the following procedures:

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Any assessment not paid on a timely basis by a member within the specified time period will be addressed according to the Association Policy on Member Accounts with Outstanding Balances and the Association Policy on Agreed Payment Plans for Accounts with Outstanding Balances.

(a) Enforcement by Suit:

By commencement and maintenance of a suit at law against any owner or owners personally obligated to pay assessments for such delinquent assessments as to which they are personally obligated, such suit to be maintained in the name of the Association. Any judgment rendered in any such action shall include the amount of the delinquency, together with all costs thereon as provided for at Section 8 of this Article IV, costs of collection, court costs and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

(b) Enforcement by Lien:

There is hereby created a claim of lien, with power of sale, on each and every Private Residence to secure payment to the Association of any and all assessments levied against any and all owners of such Private Residences pursuant to this Declaration, together with interest thereon as provided for in Section 8 of this Article IV, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any delinquency in the payment of any such assessment, the Board or any authorized representative thereof may make a written demand for payment to the delinquent owner. Said demand shall state the date and amount of delinquency. Each delinquency shall constitute a separate basis for a demand or a claim of lien or a lien but any number of defaults may be included within a single demand or claim of lien, and any demand or claim of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. If such delinquency is not paid within ten (10) days after delivery of such demand, the Board or its duly authorized representative may thereafter elect to file and record a claim of lien on behalf of the Association against the Private Residence of the defaulting owner, in the office of the County register of Williamson County, in which suit Private Residence is located. Such claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- (1) The name of the delinquent owner
- (2) The legal description and street address of the Private Residence against which claim of lien is made
- (3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorneys' fees (with any proper offset allowed)
- (4) That the claim of lien is made by the Association pursuant to this Declaration
and
- (5) That a lien is claimed against said Private Residence in an amount equal to the amount stated, together with all other amounts becoming due from time to time in accordance with this Declaration.

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Upon such recordation of a duly executed original or copy of such a claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Private Residence against which such assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except for tax liens for real property taxes on any Private Residence, and assessments on any Private Residence in favor of any municipal or other governmental assessing unit. Any such lien may be foreclosed by appropriate and customary action for the foreclosure of a deed of trust with power of sale, or in any other manner permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association for the purpose of conducting such power of sale foreclosure. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Private Residence owners and shall secure payment of all sums set forth in the claim of lien, together with all sums becoming due and payable in accordance with this Declaration, after the date of recordation of said claim of lien. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Private Residence. Reasonable attorneys' fees, court costs, title search fees, and all other costs and expenses shall be allowed to the extent permitted by law. Each owner by becoming an owner of a Private Residence, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner, and also hereby expressly waives the defense of the statute of limitations applicable to the bringing of any suit or action thereon.

Upon the timely curing of any default for which a notice of claim of lien was filed by the Board, and the payment of all sums secured by the lien created by the recordation of such claim of lien, the Board shall cause an officer of the Association to file and record an appropriate release of such claim of lien in the office of the County Register for Williamson County.

No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the common area, or any part thereof, or any other part of the properties, or abandonment of his Private Residence. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of a claim of lien, whether judicially, by power of sale or otherwise, until the expiration of ten (10) days after a copy of said claim of lien, showing the date of recordation thereof has been mailed to the owner of the Private Residence which is described in such claim of lien.

Each owner does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Tennessee now in effect, or in effect from time to time hereafter.

SECTION 9. Subordination to Certain Trust Deeds.

The lien for the assessments provided for herein in connection with a given Private Residence shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a deed of trust or mortgage given and made in good faith and for value that is of record as an encumbrance against such given Private Residence prior to the recordation of a claim of lien for the assessments provided for in this Declaration against such given Private Residence (such deed of trust or mortgage being hereinafter referred to as a "prior deed of trust"). The sale or transfer of any Private Residence shall not affect the assessment lien provided for herein nor the creation thereof by the recordation of a claim

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of lien on account of assessments becoming due whether prior to, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any owner for delinquent assessments as provided for by Section 1 of this Article IV; provided, however, that the sale of a prior deed of trust or proceeding in lieu of foreclosure of a prior deed of trust, shall extinguish any assessment lien which has attached and become effective with regard to the Private Residence being so transferred prior to the time of such sale or transfer; provided, however, that there shall be a lien on the interests of the purchaser at such sale which shall attach, be created and become effective and be foreclosed in accordance with this Declaration and which shall secure all assessments becoming due after the date of any such sale or transfer. For the purpose of this Section 9, a sale or transfer of a Private Residence shall occur on the date of recordation of a deed or other instrument of title evidencing the conveyance of record title to the Private Residence.

SECTION 10. Exempt Property.

The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All properties dedicated to and accepted by any local public authority
and
- (b) The Common Area.

SECTION 11. Mortgagee Protection Clause.

No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein shall defeat or render invalid the lien of any prior deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or trustee's sale, or otherwise.

ARTICLE V

Property Rights

SECTION 1. Members' Easements of Enjoyment.

Every member of the Association shall have a right and non-exclusive easement of enjoyment in and to the common area, and a non-exclusive easement for ingress and egress over and through the public streets, and such easements shall be appurtenant to and shall pass with the title to every Private Residence, subject to the following provisions:

- (a) The right of the Association to limit the number of guests, and to adopt Association Rules regulating the use and enjoyment of the common area, including, but not limited to, the right to extend use of the recreational facilities to non-members in consideration of payment of a fee as determined by the Association and subject to such rules and regulations as may be established by the Association.
- (b) The right of the Association, in accordance with its Declarations and By-Laws to borrow money for the purpose of improving the common area and facilities and in aid thereof to mortgage said property, provided that the rights of such mortgagee shall at all times be subordinate to the rights of the owners under this Declaration.

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- (c) The right of the Association to suspend the voting rights and right to use of the recreational facilities located within the common area by a member for any period during which any assessment against his Private Residence remains delinquent, and for a period not to exceed thirty (30) days after notice and hearing as provided for in the By-Laws for any infraction of the Association Rules.
- (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 or transfer shall be effective unless an instrument has been approved by two-thirds (2/3) of the entire membership.

SECTION 2. Delegation of Use.

Any member may delegate his right of use and enjoyment to the common area and the private driveways to the members of his single family or his tenants who reside on his Private Residence. The term "single family" shall mean a group of one or more persons each related by blood, marriage or legal adoption, or a group of one or more persons not so related, together with their domestic servants, who maintain a common household in a dwelling upon a Private Residence.

SECTION 3. Title to Common Area.

AMENDED AS OF MAY 15, 2007

Section 3 shall be stricken in its entirety.

SECTION 4. Parking Rights.

The use of any and all parking within the common area, together with the terms and conditions with regard to such use, shall be subject to and at all times governed by the Association Rules as the same are in effect from time to time. Each owner shall have a non-exclusive easement of ingress and egress in, upon and over public streets for the purpose of access to and from his Private Residence.

ARTICLE VI

Use Restrictions

In addition to all other covenants contained herein, the use of the properties is subject to the following:

SECTION 1: Use and Maintenance of Owners Units

(a) Except as otherwise provided in this Declaration, each Private Residence shall be used as an individual dwelling unit and for no other purposes. Except as otherwise provided in this Declaration, the common area shall be used for recreational, social, and other purposes directly related to the single-family use of the Private Residences authorized hereunder.

(b) The owners of the individual dwelling units shall be responsible for the maintenance of, and shall maintain the interiors of their dwelling units, including interior walls, windows, glass, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean, sanitary and attractive condition, reserving to each owner, however, complete discretion as to choice of furniture, furnishings and interior decorating.

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(c) With the exception of the Additional Maintenance Areas located upon the Private Residences which additional maintenance areas are described at Section 4 (b) of Article III of this Declaration, which are to be maintained by the Association, the owner of each Private Residence shall:

- (1) keep his Private Residence free from rubbish, litter and noxious weeds
- (2) maintain, cultivate and keep in good condition and repair shrubs, trees, grass, lawns, plantings and other landscaping located, or from time to time placed upon his Private Residence
and
- (3) replace dead plants, shrubs, trees, grass or other landscaping on this Private Residence with plants, shrubs, trees, grass or landscaping of the same similar type. Each Private Residence shall be subject to an easement for access to make necessary repairs upon adjoining Private Residences and structures thereon provided, however, that:
 - (1) Any damage caused by such entry shall be repaired at the expense of the owner whose property was the object of the repair work which led to such entry
 - (2) Any such entry shall be made only at reasonable times and with as little inconvenience as possible to the owner of the entered Private Residence
and
 - (3) In no event shall said easement be deemed to permit entry into the interior portions of any residence.

SECTION 2: Owner's Maintenance of Shrubbery

AMENDED AS OF MAY 15, 2007

The Association, and its authorized agents, shall have the right and the obligation at any time to plant, replace, maintain and cultivate shrubs, trees, grass, plantings and the landscaping upon the common area and the additional maintenance areas and, subject to the conditions stated below, on all or any portion of a Private Residence.

With the exception of the Additional Maintenance Areas located upon the Private Residences which additional maintenance areas are referred to in Section 4 (b) of Article III of this Declaration which are to be maintained by the Association, the owner of each Private Residence shall:

- (1) keep his residence free from rubbish, litter and noxious weeds;
- (2) maintain, cultivate and keep in good condition and repair shrubs, trees, grass, lawns, plantings and other landscaping located, or from time to time placed upon his residence;
- (3) replace dead plants, shrubs, trees, grass or other landscaping on this Residence with plants, shrubs, trees, grass or landscaping of the same similar type, and
- (4) maintain landscaping within enclosed patios and other enclosed areas.

In the event an owner shall fail to comply with the provisions of this paragraph of this Article VI, the Board shall notify such owner in writing of such lack of compliance which notice shall specify the nature of such lack of compliance. If such owner fails to remedy such lack of compliance within five (5) days after receipt of such notice (or within such greater time period as may be specified in such notice), or, in the alternative fails to deliver written notice to the Board within five (5) days from receipt of such notice requesting a hearing before the Board with regard to the matters of non-compliance set

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forth in such notice, the Association or its authorized agents shall have the right to enter upon such owners' Private Residence for the purpose of remedying the matters set forth in such notice, and shall not be liable for trespass in connection with such entry. If the owner timely requests a hearing before the Board, the Board shall schedule a hearing and shall provide the owner with at least seven (7) days' written notice as to the date, time and place thereof. At the hearing the owner will have an opportunity to discuss with the Board the merits of the claims set forth in the Board's original notice of non-compliance and the Board will determine what actions, if any, need to be taken by the owner. The decision of a majority of the members of the Board present at the hearing will be binding on the Association and the owner. In the event it is determined that the owner has not complied with the provisions of this Section 2, the Board shall establish a reasonable time within which the owner shall so comply. If the owner fails to so comply within such time period, the Association or its authorized agents shall then have the right to enter upon the owner's Private Residence for the purpose of remedying such matters and shall not be liable for trespass in connection therewith. The cost of remedying an owner's failure to comply with the provisions of this Section 2 shall be assessed to the owner of the Private Residence and such assessment shall be due and payable thirty (30) days from the date of written notice thereof and shall be collected and enforced in the manner provided for by this Declaration. No owner shall remove, alter or injure in any way any shrubs, trees, grass, plants or other landscaping placed upon his Private Residence by the Association which is located upon the additional maintenance areas, without the written consent of the Board having first been obtained.

SECTION 3: Signs & Billboards

No sign or billboard of any kind shall be displayed to the public view on any Private Residence except for (a) directional signs established by the the Association, and (b) signs for each Private Residence which may be placed thereon by the owner of the particular Private Residence for the purpose of advertising the Private Residence for sale or rent, which signs shall not be larger than is reasonable and customary in the area for the purpose of advertising similar property for sale or rent.

SECTION 4: Offensive Activities

No noxious or offensive activity shall be carried on upon any Private Residence or any part of the properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners of his respective dwelling unit, or which shall in any way increase the rate of insurance.

SECTION 5: Temporary Structures

AMENDED AS OF MAY 15, 2007

No structure of a temporary character, trailer, tent, shack, garage, barn or other out-building shall be used on any Private Residence at any time as a residence, either temporarily or permanently. No trailer, camper, boat or similar equipment shall be permitted to remain upon any Private Residence or within the common area unless on a space designated for such use by the Association.

SECTION 6: Owner's Animals & Pets

No animals, reptiles, rodents, livestock, birds, fish or poultry of any kind shall be raised, bred or kept on any Private Residence except that dogs, cats or such other household pets as may be approved by the Association may be kept on the Private Residence, provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers. Notwithstanding the foregoing, no animals or fowl may be kept on the

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properties which result in an annoyance, or are obnoxious to residents in the vicinity, and in any event, any Private Residence owner shall be absolutely liable to each and all remaining owners, their families, guests, invitees, tenants and to the Association, for any and all damage to person or property caused by any pets brought upon or kept upon the Private Residence or the common area by any Private Residence owner or by members of his family, guests or invitees. Upon the written request of any owner, the Board shall conclusively determine, in its sole and absolute discretion, whether for the purpose of this Section 6, a particular animal, bird, fowl, poultry or livestock is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds is reasonable.

SECTION 7: Fences, Screens, Awning, Hedges, Etc.

AMENDED AS OF MAY 15, 2007

No fences, ornamental screens, awnings, screen doors, sunshades, walls, or hedges shall be erected or permitted upon the properties, except such as are installed in accordance with the initial construction of the buildings and improvements or as approved by the Association. No building, including out-buildings, patios, decks, fences and porches, shall be removed from or erected, placed or altered on any Private Residence until the construction plans, specifications and a plan showing the exact location of the structure or improvements have been approved in writing by the Association as to quality of workmanship and materials, harmony of external design with existing structure or structures and as to location. Any alteration in the exterior color of any structural improvement shall be subject to the prior approval of the Association.

SECTION 8: Antennae, Aerials, etc.

AMENDED AS OF MAY 15, 2007

Satellite dishes less than one (1) meter in diameter will be allowed for Private Residences but the Board must approve their location. All other types of appliances or installations upon the roofs or sides of any dwelling situated upon a Private Residence shall not be permitted unless they are installed in such manner that they are not visible from neighboring property or adjacent streets and are approved by the Association.

SECTION 9: Garbage, Clothes Lines, Incinerators

AMENDED AS OF MAY 15, 2007

All rubbish, trash and garbage shall be regularly removed from the properties and shall not be allowed to accumulate thereon. All clotheslines refuse containers, storage areas, disabled vehicles and machinery and equipment shall be prohibited upon any Private Residence. No incinerators shall be kept or maintained on any Private Residence.

SECTION 10: Property Taxes & Utility Charges

Each owner of a Private Residence shall pay any real and personal property taxes or charges assessed against his respective Private Residence and the utility charges for said Private Residence.

SECTION 11: Plant Diseases & Noxious Insects

No owner shall permit any thing or condition to exist upon any portion of the properties, which shall induce breed or harbor infections, plant diseases or noxious insects.

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SECTION 12: Right to Enter & Inspect Properties

During reasonable hours, any member of the board, or any authorized representative of the Board, shall have the right to enter upon and inspect any portion of the properties and the improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry, provided twenty-four (24) hours' prior written notice has been given to the owner.

SECTION 13: Restrictions Not Applicable to Declarant

Section 13 shall be stricken in its entirety.

AMENDED AS OF MAY 15, 2007

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SECTION 14: Business Use

AMENDED AS OF MAY 15, 2007

No trade or business may be conducted in or from any Private Residence, except that an Owner or occupant residing in a Private Residence may conduct business activities within the Private Residence so long as:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Private Residence;
- (b) The business activity conforms to all zoning requirements for the properties
- (c) The business activity does not involve door-to-door solicitation of residents of the Association; and
- (d) The business activity is consistent with the residential character of the Association and all restrictions applicable to the Association, and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Association, as determined in the sole discretion of the board. The terms "business" and "trade", as used in this Section 14 of Article VI, shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which includes the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether:
 - (1) such activity is engaged in full or part time;
 - (2) such activity is intended to or does generate a profit; or
 - (3) a license is required therefor.

Notwithstanding the above, the leasing of a Private Residence shall not be considered a trade or business within the meaning of this Section. Nothing herein shall be deemed to prevent the leasing of any Private Residence from time to time by the owner thereof for residential purposes only and subject to all of the provisions of the Declaration.

SECTION 15: Vehicle Parking in Public Street

Parking of vehicles of any type whatsoever on any portion of the public street is expressly prohibited except on the event of an emergency, and then only for the limited time during such parking of vehicles is absolutely necessary. Each owner covenants and agrees to do nothing which will in any manner prevent the public streets from at all times being free and clear of obstructions and in a safe condition for vehicular use. Trash cans and other rubbish containers shall not be allowed to be visible from any portion of any of the public streets except during the days on which rubbish is collected.

SECTION 16: Compliance with Ordinances by Owners

Each owner shall promptly comply with all laws, statutes, ordinances, rules and regulations of Federal, State or municipal governments or authorities applicable to use and occupancy of and construction and maintenance of any improvements upon the Private Residences.

SECTION 17: Established Drainage Patterns of Sites

Each owner hereby covenants and agrees for himself, his heirs, assigns, vendors and successors in interest that he will refrain from interference with the established drainage pattern over his Private Residence from adjoining or other Private Residences, and made adequate provisions for proper drainage from any such other Private Residence in the event the established drainage over his Private Residence is changed or altered. For the purpose hereof "established" drainage is defined as the drainage which will occur at the time the overall grading of the properties, including the landscaping of each Private Residence is completed.

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SECTION 18: Approval Required of Fences, Walls, etc.

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association (or by an architectural committee composed of three (3) or more representatives appointed by the Board). In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully compiled with.

ARTICLE VII

Easements

SECTION 1. Common Area

The common area shall be owned by the Association in fee simple for the use, enjoyment and convenience of the owners, and shall contain the parking areas, walkways, recreational areas, storage and trash areas, and all other areas not a part of the Private Residences. Each Private Residence within the properties subject to this Declaration is hereby declared to have an easement over all of the common area, for the benefit of the Private Residences, the owners of all Private Residences, and each of them, and for their respective families, guests, invitees, tenants and contract purchasers, for all of the purposes and uses herein above set forth, and without limiting the generality of the establishment of this easement.

SECTION 2. Easements of Adjoining Structures

Each Private Residence and the common area is hereby declared to have an easement over all adjoining Private Residences and the common area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the willful act or acts of said owner or owners. In the event a structure on any Private Residence is partially or totally destroyed, and then repaired or rebuilt, the owners of each Private Residence agree that minor encroachments over adjoining Private Residences shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

SECTION 3. Easements of the Association

There is hereby reserved to the Association, or their duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association as are set forth in this Declaration, or in the By-Laws, and the Association Rules.

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SECTION 4. Legality of Easements

Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and the benefit of the Private Residences and the common area, as the case may be, superior to all other encumbrances applied against or in favor of any portion of the properties which is the subject of this Declaration. In furtherance of the easements provided for in this Declaration the individual grant deeds to Private Residences may, but shall not be required to, set forth said easements.

SECTION 5. Declarant's Development of Properties

Section 5 shall be stricken in its entirety.

AMENDED AS OF MAY 15, 2007

SECTION 6. Easements for Utilities

The rights and duties of the owners of the Private Residences within the properties with respect to sanitary sewers and water, electricity, gas and telephone shall be governed as follows:

- (a) Whenever sanitary sewer house connections and/or water house connections or electricity, gas or telephone lines are installed within the properties, which connections or any portion thereof lie in or upon Private Residences owned by others than the owners of the Private Residence served by said connections, the owners of any Private Residence served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon Private Residences or to have the utility companies enter upon the Private Residences within the properties in or upon which said connections, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.
- (b) Whenever sanitary sewer house connections and/or water house connections or electricity, gas or telephone lines are installed within the properties, which connections serve more than one Private Residence, the owner of each Private Residence served by said connections shall be entitled to full use and enjoyment of such portions of said connections as service his Private Residence.
- (c) In the event of a dispute between owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then upon written request of one of such owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute and make an assessment against any or all of the owners involved, which assessment shall be collected and enforced in the manner provided by this Declaration.

ARTICLE VIII

Damage and Destruction Affecting Common Areas

SECTION 1. Repair & Reconstruction Approval

If all or any portion of the common area is damaged or destroyed by fire or other casualty, then neither the Board, the Association, or any agent or employee thereof, shall be required or permitted to take any action to repair or rebuild the damaged portions, or to

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cause the damaged portions to be repaired or rebuilt without the written consent of at least fifty-one (51%) percent of the members as to the manner of repair or reconstruction and the payment thereof.

SECTION 2. Approval versus Insurance Proceeds

Notwithstanding anything contained in this Declaration to the contrary, if the cost of repairing or rebuilding the portion of the common area so damaged or destroyed does not exceed the amount of insurance proceeds available to the Association, the Board shall be authorized and required without the consent or approval of the members to contract to repair or rebuild the damaged portions of the common area substantially in accordance with the original plans and specifications therefor.

ARTICLE IX

Party Walls

SECTION 1. General Rules of Law to Apply.

Each wall or fence which is built as a part of the original construction of the home upon the properties and placed on the dividing line between the Private Residences shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

SECTION 2. Sharing of Repair and Maintenance.

The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

SECTION 3. Destruction by Fire or Other Casualty.

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

SECTION 4. Weatherproofing.

Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

SECTION 5. Right to Contribution Runs with Land.

The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

SECTION 6. Arbitration.

In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose an arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE X

General Provisions

SECTION 1. Enforcement.

The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. A waiver of such right shall be only pursuant to an instrument in writing, signed by the party to be charged with such waiver, and shall be limited to the particular condition, covenant or restriction contained herein which is expressly set forth as being waived.

SECTION 2. Severability.

Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provisions hereof, and all such other provisions shall remain in full force and effect.

SECTION 3. Term.

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 Private Residence subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

SECTION 4. Amendments.

AS AMENDED ON JANUARY 18, 2005

The process by which these Declarations may be amended is as follows:

If a proposed amendment to these Declarations is approved and recommended by the Board, ballots shall be sent to each member by certified mail with return receipt stating the proposed amendment and fixing the time when the ballots must be received in order to be counted. Members shall have no less than thirty (30) days but no more than sixty (60) days from the date of receipt to cast their votes. Voting eligibility for members shall be in accordance with Article III, Section 3, Paragraph (a). Members may vote by ballot and that vote must be on the ballot form printed and distributed by the Association. At the end of the voting period, the President shall certify the results of the vote count. If a seven - eighths (7/8 or 87.5 percent) of those members registering their vote by either ballot, proxy, or in person respond in favor of the proposed amendment, then the President shall direct the amendment approved and have the amendment properly recorded in the office of the Register for Williamson County. The number of votes needed to approve a proposed amendment shall be dependent on the total number of votes cast.

If any ballots are returned by the U.S. Post Office as undeliverable, the Board shall attempt to personally contact those members to ascertain their current address. If no contact can be made and the Board has exercised all reasonable means of determining the whereabouts of all missing members, then those members shall be deemed as not voting.

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Any other attempt to amend the provisions of this Declaration shall be null and void and of no effect.

SECTION 5. Violation and Nuisance.

Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or any owner or owners of Private Residences.

SECTION 6. Violation of Law.

Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any of the properties is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

SECTION 7. Remedies Cumulative.

Each remedy set forth in this Declaration shall be in addition to all other remedies, whether available at law or in equity, and all such remedies, whether or not set forth in this Declaration shall be cumulative and not exclusive.

SECTION 8. Delivery of Notices and Documents.

Any written notice or other documents relating to or required or permitted by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been given, delivered and received forty-eight (48) hours after a copy of same has been deposited in the United States mail, postage pre-paid, addressed as follows:

If to the Board or the Association, at Mooreland Estate HomeOwners Association, Brentwood, Tennessee; provided, however, that any such address may be changed at any time by the party concerned, by recording a written notice of change of address and delivering a copy thereof to the Association. Any written notice or other documents relating to or required or permitted by this Declaration may be delivered to an owner either personally or by mail.

If by mail, it shall be deemed to have been given, delivered and received forty-eight (48) hours after a copy of same has been deposited in the United States mail, postage pre-paid, addressed to the owner, or to any other address last furnished by such owner to the Association. Each owner of a Private Residence shall file his correct mailing address with the Association and shall promptly notify the Association in writing of any subsequent change of address.

SECTION 9. The Declaration.

By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby, and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained

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herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

SECTION 10. Utility Easements.

Each Private Residence shall be conveyed to owners, and thereafter held by such owners, their successors and assigns, subject to any and all easements of record. At the time of the initial conveyance of the particular Private Residence involved to an owner for the use and benefit of the several authorized public and/or other utilities, including but not limited to, cable television, sanitary sewers, water, gas and electrical and drainage easements, and no Private Residence owner shall damage or interfere with the installation and maintenance of such utilities, or in any manner change the direction or flow in any such easements, or in any manner obstruct or retard the flow of water through any such easements.

SECTION 11. Notification of Sale of Private Residence.

Concurrently with the consummation of the sale of any Private Residence under circumstances whereby the transferee becomes an owner thereof, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth:

- (i) the name of the transferee and his transferor;
- (ii) the street address of the Private Residence purchased by the transferee,
- (iii) the transferee's mailing address; and
- (iv) the date of sale. Prior to receipt of such notification, any and all communications required or permitted to be given by the Association shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.

SECTION 12. Notification as to Mortgagees.

Each owner shall notify the Board through the Secretary of the Association of the name and address of the holders of all prior deeds of trust encumbering such owner's Private Residence. Each owner shall likewise notify the Board through the Secretary of the Association as to the release or discharge of any such prior deeds of trust. In addition, the holder of any prior deed of trust encumbering a Private Residence may notify the Board through the Secretary of the Association of such holder's identity and address and a description of the Private Residence which such holder's prior deed of trust encumbers. The Board shall maintain a record of the names and addresses of the holders of prior deeds of trust as to which it receives notice pursuant to the provisions of this Section 12 and shall provide the holders of all prior deeds of trust as to which it receives notice pursuant to the provisions of this Section with written notification as follows:

- (a) Written notification at least thirty (30) days prior to the effective date of (i) any change of the manager (not including change in the employees of a corporate manager) or (ii) any change in this Declaration, the By-Laws.
- (b) Written notification of any default by an owner of the obligations of such owner established by this Declaration, the By-Laws which is not cured within thirty (30) days after default; provided, however, that such written notification shall be provided only to holders of prior deeds of trust as to which the Board is given notice pursuant to this section which encumber the Private Residence owned by the owner in default.

ARTICLE XI

Obligation to Rebuild

SECTION 1. Damage and Destruction Affecting Residence -Duty to Rebuild.

If all or any portion of any residence located upon a Private Residence is damaged or destroyed by vandalism, malicious mischief, fire or other casualty, it shall be the duty of the owner of said residence to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

SECTION 2. Time Limitation.

The owner or owners of any damaged residence shall be obligated to proceed with all due diligence and commence reconstruction within two (2) months after the damage occurs, and complete reconstruction within twelve (12) months after the damage occurs, unless prevented by causes beyond their reasonable control.

ARTICLE XII

FHA-VA Approval

SECTION 1. FHA-VA Approval.

Strike this section in its entirety

AMENDED AS OF MAY 15, 2007

AS AMENDED ON AUGUST 9, 1983

ARTICLE XIII

Secondary Mortgage Market Requirements

Section 1.

Notwithstanding the above, any first mortgagee shall have all of the rights granted to a first mortgagee herein, and in addition shall have all of the rights granted to an institutional first mortgagee under its Deed of Trust, and under the Laws of the State of Tennessee.

- (1) Any lien of the Association resulting from nonpayment of the assessments against a unit must be subordinate to the first mortgage or deed of trust lien against that unit.
- (2) An adequate reserve fund for replacement of common element component must be established, which must be funded by monthly payments rather than extraordinary special assessments. In addition, there must be a working capital fund for the initial months of operation of the project equal to at least two (2) months' estimated common-area charge for each unit.
- (3) The Association shall give the holders of first deeds of trust and mortgages prompt notice of any default in the unit mortgagor's obligations under the P.U.D. documents not cured within thirty (30) days of default.

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- (4) The holders of first deeds of trust or mortgages shall have the right to examine the books and records of the Association and to require annual reports and other financial data.
- (5) A reasonable method for dealing with any condemnation of the Property shall be provided, specifying written notice to first mortgagees of any such proceedings and not disturbing mortgagee's first lien priority.
- (6) The Association shall have the right to maintain existing improvements regardless of any present or future encroachments of the common elements upon another unit.
- (7) The unit shall not be subject to any unreasonable restraints on alienation which would adversely affect the title or marketability of the unit, or the ability of the mortgage lien and thereafter to see or lease the mortgaged unit.
- (8) Appropriate fidelity bond coverage must be required for any person or entity handling funds of the Association, including, but not limited to, employees of the professional managers.

Section 2.

AMENDED AS OF MAY 15, 2007

Any right of a first mortgage which is more stringent or onerous than any other right as set out herein, shall control and govern over such other right, to the extent granted herein.

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STATE OF TENNESSEE
COUNTY OF WILLIAMSON

The owners of the residences being members of the Association having approved these Covenants, Conditions and Restrictions as being the governing documents of the Association and for that purpose join in the execution of this Declaration of Covenants, Conditions and Restrictions thereby voiding all previous versions of the Declarations, Covenants and Restrictions.

BOARD OF DIRECTORS

President

Vice-President

Secretary / Treasurer

Member

Member

STATE OF TENNESSEE
COUNTY OF WILLIAMSON

Before me, _____, a Notary Public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted and who upon their oath acknowledged themselves to be the President, and who acknowledged that they executed the within instrument for the purposes therein contained.

Witness my hand and official seal at _____ this _____ day of _____, 20____.

NOTARY PUBLIC

My commission expires: _____

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EXHIBIT "A"

SECTION 1, MOORELAND ESTATES

BEGINNING at an existing concrete monument at the intersection of the West Charter right-of-way line of the Louisville and Nashville Railroad's Nashville-Birmingham track and the north right-of-way line of relocated Moore's Lane; thence with said north right-of-way line of re-located Moore's Lane as follows:

North 82° 51' 21" west 122.22 feet to a point; thence along a curve right (chord bears North 79° 42' 26" West 121.49 feet; R=1,105.92 feet) 121.55 feet to an existing concrete monument; thence North 65° 18' 10" West 240.50 feet to an existing concrete monument; thence North 49° 36' 53" West 248.78 feet to a point at the Northwest corner of the intersection of Moore's Lane and Mooreland Boulevard which is the beginning of a curve; thence around said curve in a Northwesterly direction 48.04 feet to a point in the Easterly margin of Mooreland Boulevard; thence with said margin along a curve 453.52 feet in a Northerly direction to a point; thence with said margin North 04° 40' 46" West 295.57 feet to a point; thence North 85° 19' 14" East 300.0 feet to a point; thence North 41° 19' 14" East 335.00 feet to a point; thence South 65° 55' 46" East 540.0 feet to a point; thence South 37° 10' 32" East 428.43 feet to a point in the West Charter right-of-way line; thence with said right-of-way line 420.00 feet along a curve in a Southwesterly direction to a point; thence South 45° 38' 39" West 648.10 feet to the point of beginning. Containing 26.00 acres, more or less.

WILLIAMSON COUNTY – STATE OF TENNESSEE
Received for record the 19 day of Jan., 1976
At 2:00 o'clock p.m.

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EXHIBIT "B"

Map of Phase I, Mooreland Estates

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EXHIBIT "C"

Architect's General Drawing of Roof Elements

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EXHIBIT "D"

The Fifth Third Company v. Mooreland Estates HomeOwner's Association, et.al.

Note: For this exhibit only, the term building site refers to private residence, where appropriate.

The Fifth, Third Company v. Moore/and Estates HomeOwner's Association, et.al.
BOOK 451, Pages 806 through 832, Williamson County Register of Deeds

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STATE OF TENNESSEE, WILLIAMSON COUNTY

I, the undersigned Clerk & Master, do hereby certify this to be a true copy of the original of this instrument filed in this cause.

Janice W. Jordan, Clerk & Master

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

CASE # 14404

THE FIFTH THIRD COMPANY vs. THE MOORELAND ESTATES HOMEOWNERS
ASSOCIATION

D E C R E E

This cause came on to be heard on the fifth and sixth day of January, 1981, before the Honorable Henry Denmark Bell, Judge of the Chancery Court for Williamson County, Tennessee, the issues in this cause having been previously bifurcated by the Court, and upon due consideration of the witnesses' testimony, exhibits introduced during the trial, the trial briefs, statements of counsel, and the entire record of this cause the Court made findings of fact and conclusions of law all of which are incorporated in the Court's Memorandum Opinion which was filed and made part of the record in this cause on the fifth day of February, 1981, and are incorporated in this Decree by reference.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows:

1. The actions of the directors and minority members of the Mooreland Estates Homeowners Association in revoking the voting rights of the Fifth Third Company on March 17, 1980 were invalid and ineffective, and The Fifth Third Company is hereby restored to its voting rights in the Homeowners Association.
2. The Association will meet as soon as is convenient and establish retroactively annual assessments for the year beginning May 1, 1980, based upon the classifications set forth in the Memorandum Opinion which was filed and made a part of the record in this cause on February 5, 1981.
3. The reasonable costs of attorneys fees and other expenses incurred by both The Fifth Third Company and the minority members of the Association in litigating the issues addressed in the aforesaid memorandum opinion are hereby declared to be the obligations of the Mooreland Estates Homeowners Association and are to be included in recalculating the annual assessment for the Association members for the fiscal year beginning May 1, 1980. The rate of compensation for attorneys on each side of the controversy will be the same and will not be less than \$55.00 per hour.
4. Within thirty days after the entry of this Order the Homeowners Association will file with the Clerk and Master a report showing the action taken by the Homeowners Association pursuant to this Order, and within ten days thereafter any minority member of the Homeowners Association may file exceptions to the report.
5. If, prior to the entry of the Order approving the assessment schedule for the year beginning May, 1980, any member of the Homeowners Association desires to have the lien for assessments removed from any building sit, the Court will, upon deposit with the Clerk and Master of the sum of \$1,000.00 enter an Order herein transferring the assessment lien from the building site to the fund deposited.

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6. The court costs in this case to the date of the Decree are assessed to the Homeowners Association for which execution may issue if necessary.

Enter this 12th day of February, 1981.

Judge

CERTIFICATE

I hereby certify that copies of the foregoing Decree have this date been mailed to Michael J. Philbin, 6th Floor, Court Square Building, 303 James Robertson Parkway, Nashville, Tennessee, 37219, C. D. Berry, Third Avenue North, Franklin, Tennessee, 37064, and

Denty Cheatham, 43 Music Square West, Nashville, Tennessee, 37203.

This 19th day of February, 1981.

Clerk & Master

**Declaration of Covenants, Conditions & Restrictions
Book 255, Pgs. 331 through 365 - 1/19/76 (amended 1983, 1997, 2005, 2007)**

STATE OF TENNESSEE, WILLIAMSON COUNTY

I, the undersigned Clerk & Master, do hereby certify this to be a true copy of the original of this instrument filed in this cause.

Janice W. Jordan, Clerk & Master

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY , TENNESSEE

CASE # 14404

THE FIFTH THIRD COMPANY vs. THE MOORELAND ESTATES HOMEOWNERS
ASSOCIATION

M E M O R A N D U M

A part of this case is now before the Court on the pleadings and the evidence so far presented to determine whether or not the Fifth Third Company, as owner of building sites in the Mooreland Estates, was delinquent in payment of assessments to the Homeowners' Association as of March 17, 1980, and, if so, to determine the amount of the deficiency as of March 17, 1980, and if so, to determine the amount of the deficiency as of March 17, 1979, and as of the present. Upon the determination of whether or not the Fifth Third Company was delinquent on March 17, 1980, depends the validity of the action of the minority members of the Homeowners' Association in revoking the right of the Fifth Third Company to vote as the owner of the majority of the building sites in the development.

It appears that the development involved in this case was originally undertaken in about 1973 as a condominium development with 154 residential units and with a clubhouse, tennis courts, and swimming pool. The project was involved in a series of financial difficulties and transfers of ownership prior to 1975 when Vander, Inc., as the owner of all of the building sites other than one which had been sold to a Mrs. Bettye Swick, with the acquiescence and joinder of Bettye Swick, converted the development to a Planned Unit Development. The Declaration of Covenants, Conditions, and Restrictions was executed and recorded (Ex. 3) and on March 15, 1976, an organizational meeting of the Mooreland Estates Homeowners' Association was held at which the Association's charter was accepted and the by-laws adopted. (Ex.4) On the same day, March 15, 1976, the directors, having been elected at the organizational meeting of the Association, held a meeting. The minutes of the March 15, 1976, Board of Directors meeting show the following with respect to assessments:

"Mr. Estes reported to the meeting that he had run a cost analysis and that based upon his calculations the following monthly maintenance fee schedule was unanimously adopted by the Board until further notice:

Four Bedroom	\$ 40
Three Bedroom	38
Two Bedroom	36 (Ex. 5)

Subsequently the development again got into financial difficulty which resulted in a transfer on or about March 1, 1977, by Vander, Inc., of its ownership interest in the development to the plaintiff, Fifth Third Company, by deed and assignment whereby Fifth Third Company assumed the liabilities and the responsibilities of Vander, Inc. as Declarant.

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The minutes of the annual meetings held in March 1977 and 1978 contain no reference to assessments. (Ex. 6 and Ex. 7) It appears, from the evidence, that the owner-occupants were paying the assessments in accordance with the schedule set out in the minutes of the March 15, 1976, Directors' meeting, and the Fifth Third Company was paying the expenses of the Homeowners' Association in excess of the amount collected as assessments from the owner-occupants. The "expenses of the Association" as interpreted by the Declarant for these purposes included necessary expenses to provide electricity, water, garbage collection, maintenance of the swimming pool, tennis courts, clubhouse and common area, insurance for the benefit of all building site owners as required by the Declarations and outside repainting of units as repainting appeared necessary. No reserve was established for outside repainting or for replacement of roofs for either the individual units or the clubhouse nor was any reserve established for the ultimate replacement or major repairs to the swimming pool, tennis courts or the streets within the development.

When the Fifth Third Company took over in March 1977, 48 units had been constructed, a number of which had not been sold. In the summer of 1977, a revised plan of the development was approved by the Planning Commission and recorded by the Fifth Third Company. This revision involved, among other things, a reduction of the number of residential units from 154 to 149. This reduction was required by the Planning Commission.

Fifth Third Company decided not to build the final 101 units until the first 48 had been sold. The first 48 units were apparently almost fully sold when construction of the new units began in February 1978. In the summer of 1978 some of the new units were complete and efforts to sell them were being made. Both Fifth Third Company and its predecessor Vander, Inc., followed the practice of not doing the final outside painting on each unit until it had been contracted for sale. Fifth Third Company began repainting the exterior of the oldest occupied units in the summer of 1978. This was done in performance of the obligation of the Homeowners' Association to maintain the exterior of the residential units.

No action was taken to alter the assessment schedule until the annual meeting of the Homeowners' Association in March 1979 at which time calculations were presented as to the estimated cost of the services and benefits to the units as follows:

(a) Water Service	11.30
(b) Sewer Service	7.57
(c) Garbage Collection	4.00
(d) Middle Tennessee Electric	4.66
(e) Clubhouse maintenance, materials and supplies	2.26
(f) Grounds maintenance and manager	.87
(g) Clubhouse cleanup	2.00
(h) Master antenna TennCom	2.00
(i) Roofing escrow	5.00
0) Paint escrow	10.00
(k) Insurance	24.97
Subtotal	<u>\$ 79.56</u>
Add real estate taxes	<u>.80</u>

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Total	<u> </u> \$ 80.36
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(Ex. 8)

*** Note: The schedule above is in error as "Pool maintenance and manager" is omitted. See schedule in Appeals Court Opinion on page 56 for correct version. ***

Based upon these calculations as assessment was made of \$80.00 per unit per month. The minutes reflected that the Fifth Third Company proposed to subsidize the assessment to the extent of \$14.00, making the amount payable by owners of completed and occupied units \$66.00 per month. Beginning in May 1979 owner-occupants began to pay \$66.00 per month and the Fifth Third continued, as before, to pay the expenses incurred in the performance of the Homeowners' Association's responsibilities, in excess of the amount of the amount of assessments collected from the owners of completed and occupied units.

At the annual meeting in March 1979 several owner-occupants, in addition to Mr. Tant, were elected to the Board of Directors. Thereafter the Board of Directors met on a monthly basis and participated actively in the management of the Homeowners' Association. (Ex.9)

At some time in early 1980 and before the annual March meeting, the Directors, acting upon advice of legal counsel, declared the Fifth Third Company to be delinquent in payment of assessments, and, acting under the Declaration and by-laws governing the Homeowners' Association, the Directors and minority members proceed to revoke the voting rights of Fifth Third Company. Having taken control of the Association, the minority members proceeded at the annual meeting March 17, 1980, to fix an assessment of \$60.00 per unit per month effective May 1, 1980. (Ex.10a)

The legal position of the minority members of the Homeowner's Association is that the Declaration and by-laws require an assessment to be paid by each building site and that the assessments by "uniform". Ergo, according to the minority members, Fifth Third Company was delinquent for its failure to pay \$80.00 per month per building site owned by Fifth Third since the assessment levied in the spring of 1979 and for its failure to pay for each building site owned by it the assessment for prior years based on the assessment amount fixed in 1976.

The Court does not agree with the proposition that the requirement that the assessments by "uniform" means that absolute equality is required. From a consideration of the documents as a whole the Court is of the opinion that the building sites may be classified for assessment purposes so long as the classifications have a reasonable basis. The Court is of the opinion that the cases cited involving the constitutionality of classifications in tax statutes are applicable by analogy. The Court does agree with the owner-occupants that the Declarant's ownership of building sites is not a valid basis for classification. The fact that a building site was unimproved or that it had never been occupied would, in the Court's opinion, be reasonable bases for classification.

Under the terms of the Declaration the Declarant (Vander, Inc. and its assignee Fifth Third Company) has had effective voting control of the Homeowners' Association from the organization of the Homeowners' Association to present. The Court agrees with the position of the minority members that the Declarant has at all times been under the duty of a fiduciary to act toward the minority members and future members in utmost good faith and fairness. It is clear that the Declarant did contravene the provisions of the Declaration by not establishing and paying assessments, as such, on building sites owned by Declarant. However, it is the insistence of Fifth Third Company that he Declarant has, by establishing low assessments for the owner-occupants and discharging from its own funds the financial obligations of the Homeowners' Association, been more than fair to the owner-occupants.

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The testimony of John Moran and Mrs. Woodard together with the Exhibits to their testimony taken together with other evidence in the record support the following conclusions:

1. The amount of the assessment paid by the owner-occupants prior to the March 1979 annual meeting was substantially less than the amount required to provide the current services and benefits which were fairly chargeable to the owner-occupant building sites as opposed to the unimproved building sites and units under construction.

2. That, based upon the number of sites it owned, the Declarant paid more than its pro-rata share for operation and maintenance of the clubhouse, swimming pool, tennis courts, and common ground.

Although it appears that the financial records of the Homeowners' Association were available for inspection by the owner-occupants, it does not appear that any of the owner-occupants ever sought to examine the books and records prior to the March 1980 "takeover" meeting. The court concludes that the minority members acquiesced in the Declarant method of operation of the Homeowners' Association, they being induced to do so by the knowledge that the services and benefits received by them were worth substantially more than the assessments they were paying. On the other hand, the overpayment Declarant claims to have made was voluntary and done for its own business purposes. Therefore, the Court is of the opinion that:

1. the actions of the Directors and minority members in revoking the voting rights of Fifth Third Company were invalid and ineffective, and
2. that the Fifth Third Company is not entitled to any credit or recovery with respect to any claimed overpayment.

Although the seizure of control of the Association by fiat of the Directors and minority members was unduly precipitous, it was not entirely without justification in view of the fact that the Declarant had deviated substantially from the form of financial operations specified by the Declaration and had failed to provide depreciation reserves. The court concludes that the Directors and minority members have no personal liability to Declarant or to the Association by reason of their actions in the premises and that the Association is liable for all obligations incurred in its name by those in actual control of the Association from March 17, 1980 to the present.

The Decree will provide that the Fifth Third Company is restored to its voting rights in the Homeowners' Association will meet as soon as convenient and establish retroactively annual assessments for the year beginning May 1, 1980, based upon the following classifications:

Classification A will include building sites which are unimproved or upon which partial structures exist but the roofing is not completed. The assessment shall include a full pro-rata charge for operation and maintenance of the clubhouse, swimming pool, tennis courts, streets, and common area and for appropriate reserves for depreciation of the clubhouse, swimming pool, tennis courts and streets. The assessment shall include a proper charge for the cost of public liability insurance and for the cost of fire and extended coverage insurance attributable to the improvements located on the common area. The assessment shall also contain a full pro-rata charge for the Association's expenses for management services, accounting services, and legal services.

Classification B will include units under roof which have never been occupied. In addition to the charges included in Class A assessments, a charge of \$7.00 per month for roof replacement escrow will be included.

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Classification C will include occupied units (including all units once occupied without regard to subsequent vacancy or abandonment). In addition to charges in Class B assessments, a charge of \$10.00 per month will be included for exterior repainting escrow and the assessment will include a pro-rata charge for such services as may be made available for Class C sites by the Homeowners' Association including but not limited to water, sewer, garbage collection, electricity, termite control, pest control, fire protection, police protection, and insurance.

Obligation for payment of increased assessment will begin as of the first day of the month following the happening of the event which causes the change of classification. The reasonable cost of attorney's fees and other expenses incurred by both Declarant and the minority members in litigating the issues covered by this memorandum are declared to be the obligations of the Homeowners' Association to be included in the annual assessment for the year beginning May 1, 1980. The rate of compensation for attorneys on each side of this controversy will be the same and will not be less than \$55.00 per hour.

Within thirty (30) days after the entry of the Decree the Homeowners' Association will file with the Clerk and Master a report showing action taken by the Homeowners' Association pursuant to the Decree. Within ten (10) days thereafter any minority member of the Homeowner' Association may file exceptions to the report. If, prior to the entry of the Order approving the assessment schedule for the year beginning May, 1980, any member of the Homeowners Association desires to have the lien for assessments removed from any building sit, the Court will, upon deposit with the Clerk and Master of the sum of \$1,000.00, enter an Order herein transferring the assessment lien from the building site to the fund deposited.

Solicitor for Fifth Third Company will prepare and submit a Decree in accordance herewith and assessing court costs in this case to the date of the Decree to the Homeowners' Association.

This Memorandum will be filed and made part of the record in this cause but need not be copied upon the minutes

This ___ day of February, 1981.

Hon. Henry Denmark Bell

Judge

cc. Hon. Denty Cheatham
Attorney at Law
43 Music Square West
Nashville, Tennessee 37203

Hon. Michael Philbin
Attorney at Law
Court Square Building
Nashville, Tennessee 37201

Hon. C.D. Berry
Attorney at Law
Third Avenue North
Franklin, Tennessee 37064

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FILED March 26, 1982
Ramsey Leathers, Clerk
Court of Appeals

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

THE FIFTH THIRD COMPANY (Plaintiff-Appellee)

vs.

THE MOORELAND ESTATES HOMEOWNERS ASSOCIATION and
MICHAEL TANT, DON McNEIL, DAVID STOCKS and ANNE VAUGHN,
Individually and as Board of Directors for the Mooreland Estates
Homeowners Association (Defendants-Appellants)

APPEALED FROM THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
THE HONORABLE HENRY DENMARK BELL, JUDGE

MICHAEL J. PHILBIN
300 James Robertson Parkway
Nashville, Tennessee 37201

L. GINO MARCHETTI
300 James Robertson Parkway
Nashville, Tennessee 37201
ATTORNEYS FOR PLAINTIFF-APPELLEE

DENTY CHEA TRAM
CHEATHAM & PALERMO
43 Music Square West
Nashville, Tennessee 37203
ATTORNEY FOR DEFENDANTS-APPELLANTS

**REVERSED IN PART,
AFFIRMED IN PART,
AND REMANDED**

**SAMUEL L. LEWIS
JUDGE**

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WILLIAMSON EQUITY

THE FIFTH THIRD COMPANY (Plaintiff-Appellee)

vs.

THE MOORELAND ESTATES HOMEOWNERS ASSOCIATION
and MICHAEL TANT, DON McNEIL, DAVID STOCKS and
ANNE VAUGHN, Individually and as Board of Directors for the
Mooreland Estates Homeowners Association (Defendants-Appellants)

O P I N I O N

Plaintiff filed suit on April 18, 1980, in the Chancery Court for Williamson County against defendants The Mooreland Estates Homeowners Association (Association) and Michael Tant, Don McNeil, David Stocks and Anne Vaughn, Individually and collectively as the Board Of Directors for the Association. Plaintiff sought declaratory and injunctive relief in addition to monetary damages and attorneys fees allegedly incurred as a result of the denial of plaintiffs voting rights in the Association.

Defendants, together with other members of the Association, filed a counterclaim seeking to recover allegedly delinquent assessments from plaintiff and also sought damages for alleged defects in construction of individual residential units, the clubhouse, and other amenities, and the sewerage and drainage facilities. The Chancellor bifurcated the issues and, on January 5, 1981, a bench trial was had on:

1. plaintiffs contention that it had been wrongfully deprived of its voting rights in the Association and
2. the Association's counterclaim for alleged delinquent assessments.

The Chancellor:

1. found that plaintiff was not delinquent in paying its assessments on March 17, 1980, when plaintiff s voting rights in the Association were revoked and ordered that plaintiff be restored to its voting rights in the Association.
2. ordered a retroactive 1980 assessment, established three classifications for assessment purposes and that the Association "file with the Clerk and Master a report showing the action taken pursuant to" the Court's order.

and

3. ordered the Association to pay attorneys fees for both plaintiffs and defendants' attorneys.

The Association reassessed the owners as per the classification ordered by the Chancellor, and on May I, 1980, the Chancellor approved the assessment. Pursuant to the Court's order, a special assessment of \$238 was made to each of plaintiffs vacant lots and to each completed unit for payment of attorneys fees of the parties; however, the payment of this assessment was stayed pending appeal.

The pertinent facts are as follows:

The original development plan involved a 26.08 acre tract set aside for 154 multi-family units with a common area containing a clubhouse, swimming pool, and tennis courts.

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Frank Webb Builders, Inc. began construction in 1973 with funds advanced by plaintiffs parent company, the Fifth Third Bank of Cincinnati, Ohio through Thomas & Hill, Inc., a West Virginia mortgage lender which at the time had offices in Tennessee. By 1974 or early 1975, the clubhouse, swimming pool, and some of the private streets had been completed.

Frank Webb Builders, Inc. subsequently defaulted on the construction loan and, on March 4, 1975, Mooreland Estates was acquired through a foreclosure sale by Vander, Inc., a Tennessee corporation. On March 4, 1975, only one unit in the development had been sold. Vander, Inc. had been formed by Thomas & Hill, Inc. to hold title to distressed properties and for the purpose of attempting to get faltering projects back on their feet.

Vander, Inc.'s officers and agents voided the condominium documents prepared by Frank Webb Builders, Inc. in order to proceed with development and sale of residential units on the 26.08 acre tract as a planned unit development. In accordance with this plan, the Association was incorporated on January 22, 1976. On January 22, 1976, Vander, Inc. deeded the common area in the 26.08 acre tract to the Association.

The Association was chartered as a non-profit Tennessee corporation "to provide for the maintenance, preservation, and architectural control of the building sites and common area." The documents governing Mooreland Estates and its Homeowners Association consisted of a set of by-laws and a recorded "Declaration of Covenants, Conditions, and Restrictions." (Declaration).

Because of prevailing economic conditions, Thomas & Hill, Inc. and its subsidiary, Vander, Inc., were unable to stay in business and, on March 1, 1977, the mortgage and note made by Vander, Inc. to Thomas & Hill, Inc. were assigned to plaintiff. Under the by-laws of the Association and the Declaration governing Mooreland Estates, the developer, who, at the time of adoption of the documents, was Vander, Inc. was known as the "Declarant".

Plaintiff subsequently became the "Declarant" by assignment on or about March 1, 1977, and at that time some of the units had been completed and sold and others were under construction. The Declaration provides in Article III, Section 3, that the Declarant will be a "Class B" member of the Association and having three votes for each building site owned while all other members will be Class A, having only one vote for each building site. The voting rights of other members can only become equal to the Declarant when either

(1) three-fourths of the building sites have been sold and the other members have as many votes as the Declarant or, (2) five years have elapsed since the first sale of a building site to another member (other than the only unit which was sold at the time of the Declaration). Five years have now elapsed and plaintiff, as Declarant, has only one vote for each lot that it owns.

Article IV, Section I, of the Declaration provides that [t]he Declarant, for each building site owned, hereby covenants, that each owner of any building site by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, for each building site owned, to pay to the Association: (I) Annual assessments; (2) Special Assessments, such assessments to be established, made, and collected as hereinafter provided."

Section 3 provides that " the Board of the Association shall set an annual assessment which shall be paid by all building site owners, including Declarant, for each building site owned by Declarant, said assessment taking into consideration current maintenance costs and future needs of the Association."

Section 6 provides that "Annual and Special Assessments must be fixed at a uniform rate for all building sites."

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The organizational meeting of the Association was held on March 15, 1976. The Association's charter was accepted and the by-laws adopted. On the same day, the Directors of the Association adopted a monthly maintenance fee of \$40 per month for four-bedroom units, \$38 per month for three-bedroom units, and \$36 per month for two-bedroom units. Vander, Inc. paid all expenses of the Association while it was the Declarant. When plaintiff became the Declarant, it continued to pay all expenses of the Association into the fiscal year 1978. Funds collected from the individual unit owners under the original assessment schedule adopted on March 15, 1976, were deposited in the Association's bank account and were not used to pay the bills of the Association during 1976 and 1977.

Plaintiff paid the expenses of the Association in lieu of paying assessments just as Vander, Inc. had done before. In 1978, however, most of the assessments were paid by members other than Declarant, as well as most of the assessments paid by members in 1976 and 1977 were co-mingled with plaintiff's contractor, CDC, Inc., which was managing the affairs of the Association without charge. The combined funds were used to pay current expenses of the Association. Plaintiff continued to pay a substantial portion of the expenses of the Association in 1978, contributing some \$54,362.10 for this purpose. The Association, as a result of funds being used to pay expenses, had only \$2,012.99 on hand at the end of 1978, according to the tax return.

At the March, 1979 annual meeting, the Board of Directors of the Association was increased from three to five members. The new board members were resident building site owners, which gave them four members on the Board and the Declarant one member on the Board. At the first meeting of the new Board, defendant Michael Tant, who had served on the three-member Board, was named President of the Association. At this Board meeting, an assessment was adopted whereby plaintiff would pay \$26 per month to the Association on each of its remaining eighty-nine building sites and each individual unit owner was assessed at the rate of \$80. Plaintiff paid \$14 per month of each individual unit owners' assessment, making the amount paid by the individual unit owners \$66 per month.

It is the plaintiffs contention that the foregoing assessments were not arbitrary but rather were based on a good-faith effort to assess each class of property owners, that is, vacant lots and completed units in accordance with the benefits received. Plaintiff contends that the rate was based on a projected operating budget of the Association for the year commencing in May, 1979, and that a specific breakdown of the services and benefits to individual owners of completed units was as follows:

(a) Water Service	\$ 11.30
(b) Sewer Service	7.57
(c) Garbage Collection	4.00
(d) Middle Tennessee Electric	4.66
(e) Clubhouse maintenance, materials and supplies	2.26
(f) Grounds maintenance and manager	5.53
(g) Pool maintenance and manager	.87
(h) Clubhouse cleanup	1.40
(i) Master antenna -TennCom	2.00
(j) Roofing escrow	5.00

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(k) Paint escrow	10.00
(l) Insurance	24.97
Subtotal	<u>79.56</u>
Add real estate taxes	.80
Total	<u>\$ 80.36</u>

It is plaintiffs insistence that it did not receive all of the foregoing benefits and services but that it was assessed and paid the same rate assessed to the individual owners for those benefits and services it received for its vacant lots and unfinished units. It contends that it was improperly assessed since it did not receive water service, sewer service, or garbage collection for its vacant lots. It did not receive any benefits from the master antenna or from insurance on completed and sold units. It contends that the assessment for the services and benefits from which it did receive was as follows:

(e) Clubhouse maintenance, materials and supplies	\$ 2.26
(f) Grounds maintenance and manager	5.53
(g) Pool maintenance and manager	.87
(h) Clubhouse cleanup	1.40
o) Roof escrow	5.00
(k) Paint escrow	10.00
(l) Insurance (for clubhouse only)	.94
Total	<u>\$ 26.00</u>

Plaintiff continued to pay the expenses of the Association during 1979 which were in excess of the assessments collected.

The Board, on January 30, 1980, hired a professional property manager, Greater Property Management, Inc., headed by Mr. Douglas Dabbs. Mr. Dabbs, upon examination of the Declaration governing the Association, its property and members, came to the conclusion that assessments must be made at a "uniform rate" for all building sites. Based upon a "uniform rate" for all sites, a budget was prepared to be presented at the annual meeting on March 17, 1980, in which all 149 building sites would be assessed \$65 per month.

Plaintiff and certain members of the Board of the Association disagreed on the amount of assessment to be paid by the plaintiff on its undeveloped lots. It was, and is, the defendants' contention that a "uniform rate" of assessment as provided for in the Declaration required plaintiff to pay assessments in an equal amount as those paid by the individual unit owners.

On March 12, 1980, five days prior to the annual Association meeting, four of the five members of the Board of Directors held a meeting by telephone. No written notice of a special Board meeting was sent to all Directors as required by Article VI, Section 2, of the by-laws. The Board member representing the Declarant was not notified of the meeting. Pursuant to the telephone meeting of the four Board members, a letter was sent to plaintiff on March 13, 1980, declaring plaintiff delinquent in paying of assessments. This letter was received on March 18, 1980, one day after the Association meeting at which plaintiff's voting rights were denied. At no prior time had anyone connected with the Association informed the plaintiff that it was delinquent in its assessment payments.

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We are first presented with determining what the meaning of "a uniform rate" is as provided in Section 6 of the Declaration which provided that "Annual and Special Assessments must be fixed at a uniform rate for all building sites."

It is defendant's contention that all building sites, whether vacant or whether they contain completed residences, must be assessed at an equal amount, or, at the least, classifications should only be only used "which are clearly contemplated by the language of the Declaration taken as a whole, or at least not clearly not contemplated by it." Defendant's concede that assessments do not have to be equal in order to be uniform, such as the first assessment made by the Board of the Association in 1976 which called for different assessments for two, three and four bedroom units. However, plaintiff takes issue with the classification adopted by the Chancellor, which is as follows:

Classification A will include building sites which are unimproved or upon which partial structures exist but the roofing is not completed. The assessment shall include a full pro-rata charge for operation and maintenance of the clubhouse, swimming pool, tennis courts, streets, and common area and for appropriate reserves for depreciation of the clubhouse, swimming pool, tennis courts and streets. The assessment shall include a proper charge for the cost of public liability insurance and for the cost of fire and extended coverage insurance attributable to the improvements located on the common area. The assessment shall also contain a full pro-rata charge for the Association's expenses for management services, accounting services, and legal services.

Classification B will include units under roof which have never been occupied. In addition to the charges included in Class A assessments, a charge of \$7.00 per month for roof replacement escrow will be included.

Classification C will include occupied units (including all units once occupied without regard to subsequent vacancy or abandonment.) In addition to charges in Class B assessments, a charge of \$10.00 per month will be included for exterior repainting escrow and the assessment will include a pro-rata charge for such services as may be made available for Class C sites by the Homeowners' Association including but not limited to water, sewer, garbage collection, electricity termite control, pest control, fire protection, police protection, and insurance.

We have been unable to find any cases which have determined what is meant by "uniform rate" as used in Section 6 of the Declaration. However, we have been cited to several cases which we feel are analogous. In *Matson Navigation Co. v. State Board of Equalization*, 297 U.S. 441 (1936), the Supreme Court was faced with the question of whether a California franchise tax denied a corporation equal protection since there were two different rates charged:

- (1) for a corporation engaged in intrastate commerce and
- (2) for a corporation engaged exclusively in interstate commerce.

The court upheld the taxing act, stating:

The measure of the exaction does not lack uniformity because of differences in the amounts of net incomes contributable to California. Appellant's contention is not supported by the fact that there are or may be substantial differences between the amounts and sources of net incomes of corporations subject to the tax. The rate is uniform; no discrimination results from its application.

See also *Meidler v. Aetna Casualty and Surety Co.*, 506 F. 2d 732 (5th Cir. 1975).

In order for the assessment to be uniform, it is not necessary that it be absolutely equal. If each of the owners similarly situated are assessed a rate based on a reasonable

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classification adopted by the Board, then the rate of assessment meets the requirements of Section 6 of the Declaration. We are aware of the opinion that the classification set out by the Chancellor in his Memorandum is a fair and reasonable classification and meets the requirements of being uniform. Each owner, including Declarant, is assessed and pays a rate based upon the benefits and services received.

We are further of the opinion that the Board of the Association is free to adopt different classifications in the future on which annual and special assessments may be based so long as the classification adopted meets the test of reasonableness.

We are also of the opinion that the record supports the findings of the Chancellor "that, based upon the number of sites it owned, the Declarant paid more than its pro-rata share for operation and maintenance of the clubhouse, swimming pool, tennis courts and common ground" for the years 1977 through 1980. While defendants take issue, we are of the opinion that the record supports the finding that for the period of March through December, 1977, the expenses of the Associations, including escrow, were \$38,259. The contribution from individual owners of completed units under the original assessment rate (\$36 for two bedroom, \$38 for three bedroom, and \$40 for four bedroom units) was \$30,844. The expenses of the Association after the rate of assessment set out above was \$27,375. Plaintiff paid the remaining expenses of \$27,375 and, additionally, made an old payment of \$9,807.04.

The actual expenses for 1978, including escrow, were \$81,917.13. The owners of completed units, who continued to pay under the 1976 assessment rate (\$36, \$38, and \$40 for two, three, and four bedroom units, respectively), paid a total assessment of \$21,060. This left expenses of \$60,857.13. Plaintiff paid a total of \$54,632.10, leaving a deficit of \$6,225.03.

In 1979, the expenses of the Association, including escrow, totaled \$66,544.64. The owners of completed units paid \$38,036 in assessments, leaving expenses of \$28,508.64. Plaintiff made payments totaling \$43,847.13 for an overpayment of \$15,338.49.

During the first four months of 1980, the expenses, including escrow, totaled \$28,456. Total assessments during this period to owners of completed units were \$17,952. This left expenses of \$10,504. Plaintiff, however, during this period, paid a total of \$12,616.01, for an overpayment of \$2,112.

As we have stated, we are aware of the opinion that the record supports the Chancellor's finding that plaintiff paid more than its pro-rata share of assessments for the years 1977 through 1980. Defendants further argue that "[n]either the Doctrine of Laches, Acquiescence, or Estoppel Could or Should Apply to Bar Any Relief Against the Developer, on Behalf of the Association and All Homeowners."

The Chancellor, in his Memorandum, found as follows:

Although it appears that the financial records of the Homeowners' Association were available for inspection by the owner-occupants, it does not appear that any of the owner-occupants ever sought to examine the books and records prior to the March 1980 "takeover" meeting. The court concludes that the minority members acquiesced in the Declarant method of operation of the Homeowners' Association, they being induced to do so by the knowledge that the services and benefits received by them were worth substantially more than the assessments they were paying.

The Association made no claim for "delinquent assessments" until its March 1980 meeting. From the period 1976 to 1980, the Board of Directors of the Homeowners Association approved annual budgets and set assessment rates based on those budgets. The Association, at its March 1980 meeting, sought to re-write the assessment rates for the

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years 1976 to 1980. The original assessment adopted by the Board set rates of \$36 for two bedroom, \$38 for three bedroom, and \$40 for four bedroom units. These same assessments were carried forward in 1977 and 1978. In 1979, the Board of the Association adopted a rate of assessment for completed units of \$80 per unit. The Board adopted a rate of assessment for the vacant lots owned by plaintiff of \$26 per month. In addition to the \$26 per month, the plaintiff paid \$14 of the assessed rate for each unit of the completed units, thereby reducing the amount paid by the owners of the individual units to \$66 per month.

As found by the Chancellor, throughout all of this period neither the Board nor other members of the Association were denied access to the books and records, and there is no evidence that anyone ever asked to see them. In 1979, the record-keeping was transferred to Mr. Schmitz, one of the unit owners and an officer of the Association. In *Mareate Villae Condominium Association, Inc. v. Wilfred, Inc.*, 350 So. 2d 16 (Fla. App. 1977), a case involving suit to enjoin a condominium association from imposing assessments against a unit owner, the Court stated: "[T]he time to challenge the legality of the assessments is when the assessments are sought to be enforced."

In *Plaza Del Prado Condominium Association, Inc. v. Richman*, 345 So. 2d 851 (Fla. App. 1977), the condominium association was estopped from claiming a lack of compliance for the condominium by-laws by defendant, and the Court stated: "Plaintiff was under a duty to assert itself sooner than one year after defendant's alleged violation of the by-laws."

We are of the opinion that defendants acquiesced in the method of operation of the Association since they felt it was to their advantage to do so. We next consider whether the Chancellor's award of attorneys fees to both plaintiffs and defendants' attorneys to be paid by an assessment against each of the 149 lots in Mooreland Estates was error.

The Chancellor, in his Memorandum Opinion, stated, in part, as follows:

The reasonable cost of attorney's fees and other expenses incurred by both Declarant and the minority members in litigating the issues covered by this memorandum are declared to be the obligations of the Homeowners' Association to be included in the annual assessment for the year beginning May 1, 1980. The rate of compensation for attorneys on each side of this controversy will be the same and will not be less than \$55.00 per hour.

Pursuant to the Chancellor's Memorandum, an order was entered assessing the Association the sum of \$10,990 for the services and expense of the Association's attorney and \$23,881.43 for the plaintiffs attorney for a total of \$34,871.43. To pay these fees would require a special assessment of \$238 for each of the 149 lots, of which plaintiff would pay an assessment of \$18,723.20 and the remaining members of the Association would pay \$16,146.76.

The general rule in Tennessee is that attorneys fees may not be recovered unless provided for by statute or by contract between the parties. *Goins v. Atena Casualty & Surety Company*, 491 S.W. 2d 847 (Tenn. App. 1972). There are exceptions to this rule, such as where there are property or funds before the court which have been protected or preserved by a party, and then his counsel fees may be paid out of the property or fund so preserved.

In the absence of property or funds before the court, or statute, or contract of the parties, the public policy of Tennessee is opposed to the allowance of attorneys fees of the successful party against the defeated party. *Gillespie v. Federal Compress & Warehouse Co.*, 37 Tenn. App. 476, 265 S.W. 2d 21 (1953).

In the instant case there is no statute which allows the awarding of attorneys fees, no contractual provision existing between the parties which provides for attorneys fees, and

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there is no property or funds before the Court which have been preserved, either by plaintiff or defendants, out of which attorneys fees may be paid.

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The judgment of the Chancellor in awarding attorneys fees is reversed and in all other respects the judgment of the Chancellor is affirmed with costs to plaintiff. The cause is remanded to the Chancery Court for collection of costs and any further necessary proceedings.

SAMUEL L. LEWIS, Judge

CONCUR:

HENRY F. TODD, Presiding Judge, M.S.

BEN H. CANTRELL, Judge .

Office of CLERK OF THE COURT OF APPEALS

FOR THE MIDDLE DIVISION OF THE STATE OF TENNESSEE

I, RAMSEY LEATHERS, Clerk of said Court, do hereby certify that the foregoing is a true, perfect, and complete copy of the OPINION of said Court, pronounced at its September term, 19!1., in case of THE FIFTH THIRD COMPANY vs. MOORELAND ESTATES HOMEOWNERS ASSOC.. ETC. as appears of record now on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Court at office in the Supreme Court Building at Nashville, on this, the

--- day of ~, 19~.

, Clerk

By, Deputy Clerk

**Declaration of Covenants, Conditions & Restrictions
Book 255, Pgs. 331 through 365 - 1/19/76 (amended 1983, 1997, 2005, 2007)**

FILED August 30, 1982

Ramsey Leathers, Clerk

Supreme Court

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
WILLIAMSON EQUITY

THE FIFTH THIRD COMPANY (Plaintiff-Appellee)

vs.

THE MOORELAND ESTATES HOMEOWNERS ASSOCIATION,
et.al. (Defendants-Appellants)

O R D E R

Upon consideration of the application for permission to appeal and reply thereto, briefs of counsel and the entire record in this cause, the Court is of the opinion that the application should be and the same hereby is denied at the cost of the appellants.

P E R C U R I A M

Office of CLERK OF THE SUPREME COURT

FOR THE MIDDLE DIVISION OF THE STATE OF TENNESSEE

I, RAMSEY LEATHERS, Clerk of said Court, do hereby certify that the foregoing is a true, perfect, and complete copy of the ORDER DENYING THE APPLICATION FOR PERMISSION TO APPEAL of said Court, pronounced at its December term, 19___, in case of THE FIFTH THIRD COMPANY vs. MOORELAND ESTATES HOMEOWNERS ASSOC. ETC. as appears of record now on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Court at office in the Supreme Court Building at Nashville, on this, the

___ day of ____, 19__

Clerk

By, Deputy Clerk

**PROPOSED SECOND AMENDMENT (1998)
 BYLAWS AND AMENDMENTS THERETO OF THE
 MOORELAND ESTATES HOME OWNERS ASSOCIATION
 March 15, 1989**

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By-Laws and Amendments thereto of the Mooreland Estates Home Owners Association
March 15, 1989

**THIS INSTRUMENT PREPARED BY:
MID-STATE TITLE & ESCROW, INC.
GAYLE T. MOYER, ATTORNEY, 128 HOLIDAY COURT, SUITE 125, FRANKLIN, TN
37064**

WHEREAS, By-Laws previously recorded in Book 225, page 536, Register's Office of Williamson County, Tennessee, were vacated and voided by the Declaration of Covenants, Conditions and Restrictions recorded in Book 255, page 331, said Register's Office, at the time the development was converted from a condominium development to a planned unit development; and

WHEREAS, the By-Laws of the Mooreland Estates Home Owners Association subsequently duly adopted and approved were inadvertently not recorded and the Amendment of By-Laws approved March 15, 1985, and March 14, 1986, and recorded in book 594, page 688, Register's Office of Williamson County, Tennessee, erroneously referred to the By-Laws of the Association which had been voided upon conversion of the development; and

WHEREAS, at the annual meeting of the Association on March 15, 1989, additional amendments were duly adopted and approved; and

WHEREAS, the Association desires to publish and record the By-Laws of the Mooreland Estates Home Owners Association with all amendments thereto incorporated herein.

NOW, THEREFORE, the Mooreland Estates Home Owners Association, by and through its duly authorized President, does hereby declare the following to be the By-Laws, as amended, of the Association:

ARTICLE I

NAME AND LOCATION

The name of the corporation is Mooreland Estates Home Owners Association, Inc., a Tennessee non-profit corporation, hereinafter referred to as the "Association". The principal office of the corporation shall be located at 7001 Tartan Drive, Brentwood, Tennessee 37027, but meetings of members and directors may be held *as* at such places within the State of Tennessee, Counties of Davidson or Williamson, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association"

"Association" shall mean and refer to Mooreland Estates Home Owners Association, Inc., a Tennessee non-profit corporation, its successors and assigns.

Section 2. "Properties"

"Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area"

"Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Building Site"

"Building Site" shall mean and refer to any designated dwelling unit shown upon any recorded final plat of the properties with the exception of the common area or public roads.

Section 5. "Owner"

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any building site or unit which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant"

"Declarant" shall mean and refer to Vander, Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped site from the Declarant for the purpose of development.

Section 7. "Declaration"

"Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions, as amended, applicable to the Properties recorded in the Office of the Register of Deeds, Williamson County, Tennessee,

Section 8. "Member"

"Member" shall mean and refer to those persons entitled to membership as provided in the Declaration of Covenants, Conditions and Restrictions.

ARTICLE III

MEETING OF MEMBERS

Section 1. Annual Meetings.

The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 8:00 p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour of the first day following which is not a legal holiday.

Section 2. Special Meetings.

Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

Section 3. Notice of Meetings.

Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum.

The presence at the meeting of members entitle to cast, or of proxies *entitle* to cast, one-tenth (1/10) of the votes of each class membership shall constitute a quorum for any action except as *otherwise* provided in the Articles of Incorporation, the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies.

At all meeting of members, each person may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the members of his unit.

ARTICLE IV

BOARD OF DIRECTORS SELECTION & TERM OF OFFICE

Section 1. Number.

The affairs of the Association shall be managed by a Board of not less than five (5) directors, who must be members of the Association.

Section 2. Term of Office.

At the first annual meeting the members shall elect one director for a term of one year, one director for a term of two years and one director for a term of three years; and at each annual meeting thereafter the members shall elect one director for a term of three years.

Section 3. Removal.

Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of the removal of the director, the remaining full board shall appoint a replacement to fill the vacancy until the next annual meeting, at which time a successor shall be selected to serve for the unexpired term. In the event of the death or resignation of a director, the remaining full board shall appoint a successor to fill the unexpired term. Any director who sells or otherwise transfers ownership of his unit at Mooreland Estates is deemed for purposes of this section to have resigned from the Board of Directors effective with the date of the transfer.

Section 4. Compensation.

No Director shall receive compensation for any service he may render to the Association, however, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting.

The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

Section 1. 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 members, 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 must be made from members of the Association.

Section 2. Election.

Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is permitted.

ARTICLE VI

MEETINGS OF DIRECTORS

Section 1. Regular Meetings.

Regular meetings of the Board of Directors shall be held monthly with or without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings.

Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 3. Quorum.

A majority of the number of directors shall constitute a quorum for the transaction of the business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers.

The Board of Directors shall have power to:

- (a) adopt and publish rules and regulations governing the use of the common area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;
- (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration;
- (d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- (e) employ a manager, an independent contractor or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties.

It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;
- (b) supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration to:
 - (1) fix the amount of the annual assessment against each unit at least thirty (30) days in advance of each annual assessment period;
 - (2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
 - (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- (d) issue or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge not to exceed Ten (\$10.00) dollars may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (g) cause the Common area to be managed or provide for the operation, maintenance, and management of the common area in accordance with the provisions of Article III, Section 4(a) of said declaration and further maintain, repair and care for or provide for or enforce, the additional maintenance and repair obligations of the Association and the membership in accordance with the provisions of Article III, Section 4(b) of said declaration.
- (h) determine, assess, cause to be issued by appropriate notice, enforce, all need for exterior maintenance and repair required by the Association under Article III, Section 4(b) that is caused by the willful or negligent conduct or act of the owner, owner's family, guest, invitees, or other persons using, occupying or altering owners building site with the express or implied permission, or with the Association's express written permission.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices.

The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers.

The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term.

The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year *unless unless* he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 4. Special Appointments.

The Board may elect such officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal.

Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies.

A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices.

The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties.

The duties of the officers are as follows:

President:

The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President:

The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary:

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer:

The Treasurer shall receive and deposit in appropriate bank accounts all Moines of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX

COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in the By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X

BOOKS OF RECORDS

The books, records and papers of the Association shall at all times, during reasonable hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI

ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. All assessments shall be deemed as due on the first (1st) of each month. If the assessment is not paid within fifteen (15) days after the due date, a late fee may be assessed at an amount to be determined by the Board of Directors, provided that such fee is charged in a uniform manner and amount to all members of the Association. A member of the Association, so affected, may make a written appeal to the board of Directors stating any circumstances by which he feels his late fee should be waived. The Board may then, after due consideration, at any normally scheduled open meeting, waive any or all of the individual member's late fee it deems appropriate. The amount of the assessment shall be the amount of any annual or special assessment due and shall include any and all late fees, reasonable cost of collection thereof, together with reasonable attorney's fees. The Association may bring action at law against the owner personally obligated to pay the same or foreclose the lien against the property and interest, cost, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided herein by non-use of the common area or abandonment of his lot.

ARTICLE XII

CORPORATE SEAL

The Association shall have no corporate seal.

ARTICLE XIII

AMENDMENTS

Section 1.

These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, except if the FHA or VA approval of this planned unit development is obtained, then the FHA or the VA shall have the right to veto amendments while there is Class B membership.

Section 2.

In the case of any conflict between the Charter of Incorporation and these By-Laws, the Charter shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

By-Laws and Amendments thereto of the Mooreland Estates Home Owners Association
March 15, 1989

ARTICLE XIV

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.