

**GEMSTONES COMMUNITY**

**Homeowners Association**

**For**

***Diamond Estates and Ruby Estates***



**HOMEOWNER'S MANUAL**

***(Red Book)***

**First Edition  
Edited & Reprinted**

**Released: August 1, 1998  
February 15, 2011**

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## **DEFINITION OF TERMS**

- A. **“Board”** refers to the Board of Directors
- B. **“GCHA”** refers to the Gemstones Community Homeowners' Association, Inc.
- C. As the context may require, the terms **“GCHA Member”** shall refer to Lot Owners.
- D. **“Developer”** refers to Delta Diamond Land Development, L.L.C. or its successors.
- E. **“Home Builders”** refers to individuals or companies holding valid State of Tennessee licenses to build single family homes and who have purchased lots from the Developer.
- F. **“Family”** refers to the immediate members of the GCHA member's household. Appropriate identification may be required.
- G. **“Guests”** refers to the out-of-town or out-of-community visitors of the GCHA member's household. GCHA members sharing amenities with non-current GCHA members shall be fined.

## Special Notice

This handbook is undergoing revisions expected to be completed in 2008. Readers should be aware of the following approved changes that have been adopted and implemented since the last printing:

1. Contact information:
  - a. Contact ~ **President – Board of Directors**
  - b. Mailing ~ **GCHA, Inc.; Post Office Box 30397; Memphis, TN 38130-0397**
  - c. Email ~ [president@gemstoneshoa.org](mailto:president@gemstoneshoa.org)
  - d. Telephone ~ **(901) 789-2940**
  - e. Clubhouse ~ **698 Diamond Way; Memphis, TN 38109-8358**
  - f. Attorney ~ **William E. Miller & Associates (901) 620-6976 Fax (901) 620-6976.**  
**Mailing: 1650 Murfreesboro Rd; Suite 206, Franklin, TN 37067-5081**  
**Website: (For payment on account) <http://pay.williamemiller.com/>**
2. Dues ~ (See Pages 29) In **2003** and for periods following, the respective Boards of Directors approved the following schedule for the collection of dues:
  - a. Dues of **\$300** are assessed and payable annually on the first day of January.
    - i. Current year dues not paid by **January 31<sup>st</sup>** shall be considered **delinquent**.
    - ii. Homeowners with delinquent dues shall be assessed a **late fee of 10%**.
    - iii. Dues unpaid as of **March 31<sup>st</sup>** are subject to collection **procedures the cost of which shall be added to the account of the homeowner**. Collection actions include:
      1. **Initial attorney's fee** for collection (currently a minimum of \$100)
      2. **Lien fees** (currently \$100 application and \$100 removal fees)
      3. **Lawsuits** leading to judgments (based on size of outstanding balance plus court costs)
      4. **Garnishments/levies** (based on estimated costs of collection)
  - b. Until the owner's account is current, homeowners with delinquent dues also **shall not have access to the following Gemstones' Community HOA amenities**:
    - i. Rental of the Banquet Room of Clubhouse
    - ii. Rental of Suites (overnight sleeping rooms) and
    - iii. Use of Fitness room and Saunas
  - c. During the time a homeowner's account is in collection, all contact by the homeowner and payments made by the homeowner should be with the Association's Attorney until the account becomes current.
3. Covenants ~ The governing documents are registered under the following instrument numbers at the Shelby County Register of Deeds (<http://register.shelby.tn.us>) (a copy of each is available for inspection at the Clubhouse [698 Diamond Way]):

HS5996 – original covenants (40 pages)	KL6123 – amendment/plat (5 pages)
HS7476 – revised covenants (44 pages)	KZ9774 – amendment/plat (21 pages)
JW6417 – amendment/plat (11 pages)	02043570 – amendment/plat (25 pages)
JW7082 – amendment/plat (16 pages)	02211558 – amendment/plat (9 pages)
KK5730 – amendment/plat (5 pages)	03199710 – amendment/plat (37 pages)

## **Section 1.0 – INTRODUCTION**

By owning a home or home building lot within Gemstones Community, you have become a member of a planned community which consists of three single family home subdivisions: **Diamond Estates, Emerald Estates and Ruby Estates**. Together the three subdivisions are projected to contain in excess of 600 single family homes.

Owners of residential units within Diamond Estates and Ruby Estates (originally projected to contain 485 homes) shall automatically belong to the **Gemstones Community Homeowners' Association (GCHA)**. Owners of residential units/lots within Emerald Estates automatically belong to the **Emerald Estates Homeowners Association (EEHOA)**. Should property within the overall planned development subsequently be completed for use as a school, day care center or shopping center, the owners thereof shall be excluded from either of the Gemstones Community Homeowners Associations or the Emerald Estates Homeowners Association within Gemstones Community. It is important that each homeowner understands the concept and functioning of the GCHA. This manual is intended as the definitive source of information regarding the duties and responsibilities of the GCHA and its Members.

As with most common ownership communities, property within the planned community is divided into two basic categories: private ownership of the homes and lots purchased by individuals and GCHA ownership of common properties, including land, as well as facilities and amenities. The GCHA is a non-profit corporation to which all property owners in Gemstones Community (except as noted above) are members. Just like a business corporation, a Board of Directors, elected from or appointed by the Members of the Association shall make decisions and oversees the operation of the Association.

The Association is charged with the maintenance and upkeep of the common elements and is also concerned with ensuring that the original plan for design and use of the land and homes within the community is adhered to.

Each home or lot is privately owned and the common areas are available for the use of all dues certified members of the GCHA. There are certain restrictions and guidelines for use of and changes to the elements within the community. By monitoring the design and use for the community, the GCHA is able to maintain aesthetic standards that will, in turn, sustain property values and make Gemstones Community the "premier" community in the Memphis, Tennessee Metropolitan Area.





## **Section 2.0 – ASSOCIATION LEGAL DOCUMENTS**

There are certain documents which provide a framework within which the GCHA can govern itself. These include the Articles of Incorporation; the Declaration of Covenants; Conditions and Restrictions; the Bylaws; the Book of Resolutions, and the Adopted Rules and Regulations.

### **Section 2.1 – The Articles of Incorporation**

The function of the Articles of Incorporation is to legally establish the non-profit corporation under which the Gemstones Community Homeowners' Association is operated. The Articles of Incorporation are recorded with the Declaration of Covenants in the land records of Shelby County, Tennessee.

The Articles of Incorporation provide the following information:

1. States the name of the corporation - Gemstones Community Homeowners' Association, Inc.
2. States the purpose for which the corporation has been formed.
3. Provides for no anticipated profit by the corporation and no personal liability for members for debts and obligations of the corporation.
4. Defines voting membership.
5. Dictates that the corporation operates under the direction of a Board of Directors.
6. Provides and defines the extent of indemnification for the Officers and Trustees of the Corporation.
7. Describes how the Articles of Incorporation may be amended, and how the corporation may be merged or dissolved.

## **Section 2.2 – Declaration of Covenants, Conditions and Restrictions**

The Declaration of Covenants, Conditions and Restrictions for Gemstones Community is the instrument that defines the operational concept of the community.

The terms of the Declaration will bind all present and future homeowners and mortgagees. It is important that each owner/mortgagee review this document carefully to become aware of all use restrictions of the GCHA.

The following provisions are included in the Declaration:

1. A description of the organization of the corporation and membership and voting rights.
2. A provision for and description of assessments and insurance obligations.
3. Provisions for covenant control, use restrictions, and exterior maintenance requirements.
4. Description of easements affecting the community.
5. Additional provisions defining and describing the enforcement of conditions of the Declaration, amendment and termination, mortgagee rights and requirements, and condemnations.

## **Section 2.3 – The Bylaws**

The Bylaws set forth policies and procedures for the operation of the GCHA and include the following items.

1. Definitions of terms used in the Bylaws.
2. Specifications for membership in the GCHA, as well as meeting and voting procedures.
3. Specifications for selection of the Board of Directors, their term of office, nomination and election procedures, meetings and duties, powers and functions of the individual officers and the Board.
4. A provision for liability and indemnification of the Officers and Directors.
5. Provisions for amending the Bylaws.

## **Section 2.4 – Book of Resolutions**

To assure all policies and actions taken by the Board are properly documented, they will be adopted by the Board in the form of a resolution, and then recorded and compiled in the Book of Resolutions of the GCHA.

By adopting and recording policy decisions in this manner, the Board will create a record of all past decisions and actions made on certain issues. The process of recording decisions in the form of resolutions also assures that the Board will act consistently when making future decisions on issues. Since the Board will have recorded action on past issues, it will have a basis upon which to reference future policy.

Resolutions adopted by the Board fall into the following categories: Policy Resolutions, Administrative Resolutions and General Resolutions.

### **Section 2.4.1 – Policy Resolutions**

Policy Resolutions involves the protection of GCHA assets and the rights and obligations of GCHA members. An example would be the Architectural Procedures and Guidelines which state the changes and alterations you are allowed to make to the exterior of your lot and home. It also explains how the community will be monitored for violations of what actions will be taken against the homeowners who are in violation of the resolution.

### **Section 2.4.2 – Administrative Resolutions**

Administrative Resolutions affect the internal operating procedures of the GCHA. An example is the procedure relative to the collection assessments. This resolution instructs how and when assessments are due, and what action shall be taken for late payment or non-payment of assessments.

### **Section 2.4.3 – General Resolutions**

General Resolutions are one-time decisions made by the Board to carry out administrative duties of the GCHA. This would include filling vacancies on the Board of Directors, entering into contracts for common area maintenance, etc.



## **Section 3.0 – GOVERNING THE GCHA**

### **Section 3.1 – General Responsibilities**

The legal documents for the GCHA establish the structure for governing the entire community except Emerald Estates and, if later developed, the school, the day care center and the shopping center. The GCHA owns and is responsible for maintaining the common elements and amenities which are common to the entire community (except those areas known as or reserved for Emerald Estates, the day care center, the shopping center or the school) and available for the use of all dues certified residents.

The GCHA has two primary areas of responsibility which are exercised on behalf of all homeowners. The first is the operation and maintenance of the common properties owned by the GCHA. The second responsibility of the GCHA is the enforcement of all covenants and use restrictions related to both common properties and private lots and homes. These responsibilities must be carried out in a manner consistent with the legal documents of the GCHA.

### **Section 3.2 – Board of Directors**

The GCHA's documents recognize that collective decision-making by all homeowner members of the GCHA is not an effective method for conducting business. **Therefore, all decision-making authority is vested in a Board of Directors, which functions as the executive branch of the GCHA.**

The Board has the authority to make decisions except for those areas where the documents specifically reserve this prerogative for the GCHA membership. Examples of this include the making of amendments to the legal documents and the adoption of extraordinary assessment fee increases.

The powers and duties of the Board of Directors include the following:

1. Adoption of the annual operating budget for the GCHA.
2. Hiring, supervising and discharging GCHA employees and/or professional management agent(s) for the GCHA.

3. Executing contracts for the procurement of goods and services required by the GCHA.
4. Adopting and enforcing rules and regulations, as well as enforcing compliance with all covenants and use restrictions set forth in the Declaration.

The Bylaws (Article IV) specify that the Board of Directors shall be comprised of an uneven number of homeowners (not less than five [5] and not more than seven [7]). The board initially consisted of five [5] Directors, all of whom were appointed by the Declarant. The Board currently consists solely of seven [7] elected homeowners.

All Board of Directors are legally obligated to represent the interests of the GCHA. Because the responsibilities of the Directors are substantial, and due to the fact that the Board members are volunteers, the GCHA will procure and maintain Directors and Officers liability insurance for the Board. This policy, which is a common expense funded through assessment fees, protects Board members from individual liability for their actions as Board members.

### **Section 3.3 – Committees**

The Bylaws provide for two (2) committees. The first is the Nominating Committee, which is appointed by the Board prior to each annual meeting in order to assist in the solicitation of nominees for available Board positions and to coordinate the election process. The second is the Architectural Review Board (ARB). This committee is to be appointed by the Board of Directors and is to consist of three (3) or more representatives of the GCHA. This committee plays a very important role in the governance of the GCHA and can have an immediate impact on the homeowners.

The ARB has primary responsibility for the administration and enforcement of architectural design standards and restrictions for the community. Homeowners who desire to make additions, modifications or alterations to the exterior of their private home or lot are required to submit a Request for Approval (RFA) application to the ARB. The Committee may approve, modify or disapprove requests for such exterior alterations based on policies, procedures and guidelines established by the legal documents and by the Board of Directors.

It is important that all homeowners be familiar with adopted design guidelines and procedures. Policy Resolution No. 13 Architectural Procedures and Guidelines include:

- an explanation of the design guidelines,

- a copy of the RFA application which is to be used by homeowners desiring to make modifications to the exterior of their homes or lots,
- and a summary of the application and review procedures which will be used in processing such applications.

In addition to the two (2) committees described above, the Board of Directors has the authority to appoint other committees as required. The formation of such committees can provide an effective means for achieving greater homeowner participation in the decision-making process. However, the effectiveness of such committees requires a willingness of homeowners to devote the necessary time and energy required. The following committees have been identified by the Board.

- Newsletter Committee
- Covenants Committee
- Neighborhood Watch Committee
- City Liaison Committee

### **Section 3.4 – Board of Directors Meetings**

The Board of Directors hold their regular quarterly meetings the third (3rd) Wednesday of every quarter at 6:00 P.M. at a place to be identified in a mailing to all members 30 days prior to the meetings. These meetings are open to all members of the GCHA and all members are encouraged to attend.

The Board of Directors may also hold posted monthly meetings at a regular time of its choosing. These meetings are also open to all members of the GCHA.

### **Section 3.5 – Architectural Review Board Meetings**

The ARB will hold its regular monthly meetings the 2nd Wednesday of every month at 6:00 P.M. at a place identified in a mailing to homeowners no later than 30 days prior to the meeting. These meetings are also open to all members of the GCHA. When there is no functioning ARB, said functions and all RFA's shall be referred to the Board of Directors.



## **Section 3.6 – GCHA Service Responsibilities**

The Gemstones Community Homeowners' Association is responsible for providing certain services to the owners and residents. These responsibilities include, but are not limited to, the following:

### **Section 3.6.1 – Ground Maintenance**

The GCHA is responsible for maintaining all landscaped common properties which includes, as appropriate, seeding, fertilizing, mowing, trimming, mulching, pruning and planting. Clean-up of the grounds is also the responsibility of the GCHA.

However, the owners and occupants are requested to assist in this effort by not littering and picking up litter as needed. The Board may also choose to perform landscape maintenance for the public road rights-of-way in order to enhance the visual appearance of the community.

### **Section 3.6.2 – Insurance**

The GCHA provides liability insurance for the common areas, only, as well as property insurance for the replacement value of common area facilities and amenities. Owners must secure their own individual property and liability insurance for their homes and lots. The GCHA will also provide the Directors and Officers liability insurance and fidelity bonding to protect the Board of Directors.

### **Section 3.6.3 – Property Maintenance and Repair**

The GCHA will maintain and repair any common area properties including, but not limited to, all playground areas, the club house, entryway structures, and fences located on common area. Replacement reserves for such items are collected as part of the assessment fee in order to ensure that adequate funds will be available to make any needed capital repairs and replacements.

A function normally performed by a homeowners' Association is snow removal. In the case of Diamond Estates and Ruby Estates subdivisions, all streets are dedicated to the City of Memphis which has the ultimate responsibility for snow removal.

## **Section 3.6.4 – GCHA Management Agent**

Management of the services, property and assets of homeowners' association is a specialized business requiring specialized expertise. Recognizing this, the Board of Directors shall, when financially feasible, engage an independent consultant and management agent to provide professional management services for the GCHA.

The management agent services to the GCHA will fall under three (3) principal areas:

### **Section 3.6.4.1 – Property Management**

Property Management includes supervision of any on-site personnel and contractors providing such services as grounds maintenance, repair of facilities, etc.

### **Section 3.6.4.2 – Financial Management**

Financial Management includes managing all assessment collections and disbursements; maintaining the books and records in accordance with the standards imposed by the Bylaws and resolutions; preparing the baseline annual operating budget; and advising the Board on asset management.

### **Section 3.6.4.3 – General Administrative**

General Administrative includes assisting the Board in conducting all its business; working with committees; advising and reporting to the Board; assisting in policy development, publication and distribution of the GCHA monthly newsletter, etc.

The initial Management Agreement shall be for a term of one (1) year and may be renewed for successive terms of one (1) year each. The Management Agreement shall provide for termination by the GCHA upon thirty (30) days written notice sent by registered mail. The Management Company shall not be owned by the Developer in any way. When the Management Company has been contracted, its contact information shall be posted.



## **Section 4.0 – GCHA COMMUNITY PROTECTIVE COVENANTS AND RESTRICTIONS**

The following covenants and restrictions are applicable to all residential lots located within Diamond Estates Subdivision and Ruby Estates Subdivision:

### **Section 4.1 – Introduction**

Gemstones Community is typical of modern homeowner association communities in that there are deed restrictions (covenants) and policy resolutions (rules), applicable and enforceable on all residents, which are intended to protect the character and quality of the community and the market value of the properties. In other words, some individual rights are permanently waived by purchasers for the greater benefit of living in a controlled community.

Since rules are ineffective without some means to ensure adherence, the covenants provide for certain legally enforceable remedies and penalties for violations. Enforcement authority is granted to the Board of Directors of the Gemstones Community Homeowners' community.

### **Section 4.2 – General**

No unlawful, noxious or offensive activities shall be carried on within the community, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall, in the judgment of the Board, cause unreasonable noise or disturbance to others.

All Living Units are to be used for residential purposes only. Home professional offices ancillary to other primary offices may be maintained only in accordance with the provisions and requirements of applicable local ordinances. No Lots or Living Units shall be further subdivided, conveyed, transferred, or separated into smaller lots by any owner.

Each owner shall maintain his site and property in good condition and in good repair, at his own expense, and shall not do or allow anything to be done to his home and lot which may increase the cost or cause the cancellation of insurance of others within the community and its common elements.

Quiet time for the property is from 10:00 P.M. until 8:00 A.M. During this time, there shall be no

disturbances such as car horns, loud music, outside patio parties or anything that might disturb a neighbor.

No owner shall display, hang, store or use any clothing, sheets, blankets, laundry or other articles outside the home, (other than draperies, curtains, or shades or blinds of a customary nature and appearance, subject to the rules and regulations of the Board); paint, decorate or adorn the outside; install a canopy or awning, outside radio or television antenna, C.B. radio transmitter, or other equipment; fixtures or items of any kind, without the written permission of the managing agent, acting in accord with the Board's direction.

The foregoing restrictions shall not be construed to prohibit to placing and maintaining outdoor furniture and decorative foliage of a customary nature and appearance. No owner shall display, hang, store or use any sign which may be visible without the prior written permission of the Board or the written permission of the managing agent, acting in accord with the Board's direction.

No structure of a temporary character, trailer, tent or other out-buildings shall be permitted on the property at any time, temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the dwelling structure or any portion thereof.

### **Section 4.3 – Animals / Pets**

HOMEOWNERS MAY BE FINED \$25.00 EACH TIME A DOG OR CAT OR OTHER PET IS FOUND IN VIOLATION OF ASSOCIATION RULES (EXCEPT AS IN SECTION 4.3.3 WHERE HIGHER FINES MAY APPLY).

#### **Section 4.3.1 – Leash Requirements**

All pet owners are subject to the Memphis leash laws that require all dogs and cats be leashed when in common areas. At other times animals are to be enclosed in a fenced yard.

#### **Section 4.3.2 – Pet Clean-up**

Pet owners shall use "pooper scoopers" in the common areas.

### **Section 4.3.3 – Vicious Animals**

No animals shall be raised, bred, or kept within the community, except for dogs, household cats and small birds owned as household pets by the owner provided that said pet be kept in strict accordance with the administrative rules and regulations relating to household pets from time to time adopted or approved by the Board, and provided that said pet shall not, in the judgment of the Board, constitute a nuisance to others. (See “Rights of Developer”) For community safety reasons, certain type of dogs shall be prohibited from Gemstones Community. These dogs shall include, but shall not be limited to the breeds known as: **Pit Bulls**, **Rottweilers** and **Bullmastiffs** or dogs of a mix heritage inclusive of these breeds. See examples below:



**Pit Bull**



**Rottweiler**



**Bullmastiff**

### **Section 4.4 – Trash**

Trash, garbage and other waste shall be kept only in sanitary containers and shall be disposed of in a clean and sanitary manner as prescribed from time to time in rules and regulations of the Board.

All trash cans must be stored out of view except during curb pick up times. Trash must be placed in vermin-proof containers with tight fitting lids and placed at the curb no earlier than 10:00 P.M. on the day before the day of trash pickup. Trash containers and recycle bins should be placed back out of view no later than 6:00 P.M. on trash pick up days (after pick-ups are completed).

Trash, leaves, and other articles may not be burned on lots or common areas. Accumulation or storage of building materials, litter, debris, bulk materials, or trash of any kind may not be placed on any lot. Owners doing alteration or work to their property as approved by the Architectural Review Board, may store a limited amount of materials in the rear portion of their lot providing that these materials remain on the lot only for the duration of the approved construction period.

## **Section 4.5 – Storage**

Articles of personal property belonging to any owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall not be stored or left in common areas. Storage of boats, trailers, campers, motor homes and bikes on the property shall be subject to the rules and regulations of the Board applicable thereto.

## **Section 4.6 – Building Design Related**

### **Section 4.6.1 – Designation of lots as residential**

All lots in this subdivision shall be known and described as residential lots and no structure shall be erected on any lot other than one designed specifically for single-family residential use.

### **Section 4.6.2 – Restriction against moving structures onto lots**

All building or other structures erected upon any lot shall be of new construction and no building or structures shall be moved from other locations onto a lot.

### **Section 4.6.3 – Minimum (heated square feet) one-story home size**

Every one story dwelling erected on any lot shall have not less than 1,400 square feet of heated floor space with first floor ceiling height of not less than eight (8) feet in all enclosed, heated, habitable areas.

### **Section 4.6.4 – Minimum (heated square feet) two-story home size**

All two story dwellings erected on any lot shall have a minimum of 800 square feet of heated floor space on the first floor with ceiling height of not less than eight (8) feet in all enclosed, heated, habitable areas.

### **Section 4.6.5 – Garages and Carports**

All dwellings must have an attached garage for not more than three and no less than two cars. No carports or driveway extensions beyond two additional parking spaces shall be permitted.

### **Section 4.6.6 – Basements and below ground home construction**

In the event a dwelling is constructed with a basement or partially below ground level habitable areas, said areas shall not be considered as part of the requirement for satisfaction of the 800 square feet of heated floor space for the first level of the residence.

### **Section 4.6.7 – Brick side wall requirement**

All front and side walls shall be constructed brick veneer, rear wall maybe siding selected from a pre-approved collection of colors / patterns which Delta Diamond Land Development, L.L.C. (Developer) has approved of use within the subdivision(s). In addition, the 3 outside walls of chimneys on the fronts of house(s) must be of brick veneer.

### **Section 4.6.8 – Developer’s requirement for pre-approval of home designs**

No building shall be erected on any lot until the design and plot plan thereof have been approved in writing by an authorized representative of Delta Diamond. In the event the authorized representative does not approve or disapprove such design and plot plan within seven calendar days after receipt, said approval shall not be required. For the avoidance of doubt, this seven day period shall commence from the date of receipt of the documents delivered either by hand or certified / registered mail.

### **Section 4.6.9 – Restrictions on trailers and sales offices**

Construction trailers and sales offices are permitted during the construction and sale period only.

### **Section 4.6.10 – Construction Code Enforcement**

Building setback lines shall be left to the discretion of the Memphis and Shelby County office of Construction Codes Enforcement and the interpretation of the Memphis and Shelby County Zoning Ordinance.

### **Section 4.6.11 – Mail Boxes**

The location and design of all mail boxes shall be Halle Fluted Post and must include the address number plate stand. This is a wrought iron design. No brick enclosure of this mail box or any other mail box design shall be permitted within Diamond Estates subdivision.



### **Section 4.6.12 – Restriction on signs**

All builders and contractors signs are to be removed from the lot after the house has been closed.

### **Section 4.6.13 – Construction site clean-up**

All building debris, stumps, trees, etc. must be removed from each lot by the builder as often as necessary to keep the house and lot attractive. Such debris shall be legally disposed of outside the subdivision.

### **Section 4.6.14 – Restrictions of drainage connections**

Drainage of surface water, storm water, and/or foundation drains may not be connected to sanitary sewers.

## **Section 4.7 – Jurisdictional scope and Voting Rights**

### **Section 4.7.1 – Membership in the GCHA**

All lots in Diamond Estates and Ruby Estates subdivisions shall fall under the jurisdiction of the GCHA. Each lot owner shall have one vote relating to matters being voted on by the association.

### **Section 4.7.2 – Restrictions on sub-dividing lots**

No lot once sold by the Developer shall be subdivided or combined with another lot or part thereof without the expressed written approval of the Developer, the ARB acting under the specific written direction of the GCHA Board of Directors.

### **Section 4.7.3 – Rules of Law**

If anyone of the covenants by judgment or court order shall be ruled invalid, said invalidation shall in no way affect any of the other provisions which shall remain in full force and effect.

#### **Section 4.7.4 – Indemnification of Developer**

Neither Delta Diamond, nor its agents shall be responsible in any way for any defects in plans used for construction of dwellings within any Gemstones Community subdivision including but not limited to plans which may have been approved by Developer prior to construction by the builder(s).

#### **Section 4.7.5 – Legal enforcement of GCHA rules**

If the parties hereto (lot owners, residents, etc.) or any of their heirs or assignees shall violate any of the covenants or restrictions herein before they expire, it shall be lawful for any of the following: ARB; GCHA; Developer; Builders or Individual Lot Owners to pursue enforcement of the rules via prosecution at law or in equity against the person in violation or attempting to create a violation of these rules.

#### **Section 4.7.6 – Period of validity**

These covenants shall remain in full force and effect with the land and shall be binding upon parties and persons claiming under them for a period of seven (7) years from the date these covenants are recorded.

After which time said covenants shall continue in full force and effect until an instrument signed by 2/3 majority of the then owners of the lots have been recorded agreeing to change said covenants in their entirety or in part.

#### **Section 4.7.7 – Voting Rights of Developer**

Initially, the Developer shall have a total of 485 votes within the GCHA. As lots are sold to home builders, the Developers voting rights associated with each particular lot sold shall transfer to the home builders.

#### **Section 4.7.8 – Voting Rights of Home Builders/Lot Owners**

Home builders and lot owners shall have one vote for each lot own within the jurisdiction of the GCHA. As the homes are built and sold, the voting rights associated with that lot shall transfer from the home builder / lot owner to the homeowner.

## **Section 4.7.9 – Voting Rights of Homeowners**

Homeowners shall have 1.0 vote for each residential unit owned within the jurisdiction of the GCHA.

## **Section 4.7.10 – Ultimate rights of Homeowners and Homebuyers**

The covenants and restrictions and Homeowners Association dues shall not be unilaterally changed without the consent of the majority vote from current members of the GCHA.

In the event a person has signed a contract to buy a home within the jurisdiction of the GCHA and a change is made to the **Covenants and Restrictions** prior to the homebuyer closing on the home, that Purchaser will be under no obligation to fulfill his contract to purchase lots unless he/she has signed a written waiver acknowledging his/her acceptance of the change prior to closing on the sale.

## **Section 4.8 – Home addition related restrictions**

### **Section 4.8.1 – Fences**

All fences are to be of wooden, brick, white vinyl, or ornamental metal material or combination thereof and shall conform to and be in harmony with similar structures within the subdivision in which the home is located.

The determination of compliance or non-compliance with this requirement shall be at the sole discretion of the ARB and/or GCHA.

No fences shall be constructed on any lot nearer to any street line than the house line nearest to such street.

No chain link fencing shall be permitted which are visible from street(s) in front of house.

### **Section 4.8.2 – Window Air Conditioners**

No window air conditioners shall be allowed which are visible from street(s) in front of house.

### **Section 4.8.3 – Solar Panels**

No solar panels shall be allowed which are visible from street(s) in front of house.

### **Section 4.8.4 – Additional structures**

No permanent structure shall be moved onto any lot unless it shall conform to and be in harmony with similar structures in the subdivision in which it is located. The determination of compliance or non-compliance with this requirement shall be at the sole discretion of the ARB and the GCHA.

No structure of any kind, including but not limited to a television antenna, radio antenna, etc. shall be erected either temporarily or permanently which extends more than five feet above the highest point of the roof of the house and such structures shall not be erected on the street side(s) of a residence.

### **Section 4.8.5 – Satellite communications**

No satellite communication system equipment or dishes shall be permitted to be installed except in the side or rear yard or on rear of house and then only if said equipment is 24 inches in diameter or less.

## **Section 4.9 – Residential use related restrictions**

### **Section 4.9.1 – Motor vehicle storage**

No motor vehicle or any vehicle, including but not limited to a boat, motor, and boat trailer, lawn mower, tractor, etc. may be stored on any lot for the purpose of repair or sale of same.

### **Section 4.9.2 – Auto repairs on residential lots**

No A-frame or motor mount may be placed on any lot nor shall any disabled or inoperable vehicle be stored on any lot.

### **Section 4.9.3 – Parking and Parking restrictions**

All passenger automobiles should be parked either on the driveway or in the garage. All owners, residences and their guests shall comply with all posted parking restrictions.

Parking in unauthorized areas on the first offense will have a notice placed on the car window.

On the second offense, a \$25.00 fine will be charged to all offenders.

Cars parked on the streets of Gemstones Community must be in operating condition and display a valid state license. Violators shall be reported to appropriate authorities.

Except in emergency situations, car repairs will not be allowed in the complex.

#### **Section 4.9.4 – Prohibition against tractors and trailers storage**

No tractors or trailers may be parked on any lot or in the street in front of any lot.

#### **Section 4.9.5 – Recreational vehicle storage**

No recreational vehicle, boat, or any type trailer may be parked or stored on any lot unless it can be contained in the back yard not visible from street(s) in front of house or parked completely (inside with door closed) within a garage.

#### **Section 4.10 – General restrictions**

There shall be no signs nailed to trees at any time.

There shall be no silver finish metal doors (including glass sliding doors) or windows of any kind. However, a factory painted or anodized finish may be used. The color of such finish should be white or natural earth tones.

No basketball goals (movable or otherwise) shall be permitted on any street within the community at any time.

## **Section 5.0 – GCHA DUES AND REGULATIONS**

### **Section 5.1 – GCHA Dues structure**

#### **Section 5.1.1 – Developer’s capital contribution instead of dues**

The Developer shall from time to time make financial contributions toward the construction and maintenance of amenities belonging to the GCHA. The amounts and timing of the contributions shall be determined at a later date.

#### **Section 5.1.2 – Home Builders one time dues payment**

The home builders shall make a one time payment of \$100.00 toward homeowners’ association dues at the time lots are purchased. No other dues payments shall be required unless the home builder maintains ownership of a lot longer than one calendar year in which case the home builder assessment shall be one fourth (1/4) that of the residential homeowners.

#### **Section 5.1.3 – Homeowners assessment**

By purchasing a home within Gemstones Community, each homeowner hereby agree to an annual homeowner’s assessment of \$300.00 payable on the 1st day of January.

In the event the homeowner(s) closes on his/her home at a time other than January 1<sup>st</sup> the amount of homeowners association dues shall be prorated. At the time of closing the first six months of homeowner dues shall be due at settlement and forwarded to the GCHA.

### **Section 5.2 – Late Fees**

All assessment fees are due on the 1<sup>st</sup> day of January each year and are delinquent after the 31<sup>st</sup> day of January.

A late fee of 10% of the unpaid annual dues at January 31<sup>st</sup> will be charged to each delinquent homeowner. Any Homeowners account not cleared by March 31<sup>st</sup> shall be assigned for collection. (See special notice on page 4.)



## **Section 6.0 – WINDOW TREATMENT**

All window treatment must be blinds, drapes, shades or shutters.

All backings (that are visible from outside) must be WHITE or OFF WHITE.

## **Section 7.0 – INTENT TO SELL OR LEASE**

Owners may transfer or lease their homes subject to the following requirements:

Owners may use any lease form as long as the lease shall provide the right of the lessee to use and occupy the Lot and Living Unit, subject and subordinate in all respects, to the provisions of the Articles of Incorporation, Declaration, Bylaws and the Book of Resolutions.

All homeowners who lease their residences should forward a confirmed copy of agreement to the Management Agent or the Board of Directors at least ten (10) days prior to occupancy by the Lessee.

The Management Agent or Board of Directors must be notified of any renewal, extension or termination of the lease, at least fifteen (15) days prior thereto.

### **Homes may not be leased for less than one year.**

Lessee is subject to the same rules, restrictions on Lot and Living Unit restrictions and regulations in absence of owner.





## **Section 8.0 – SAUNA AND EXERCISE ROOMS**

Hours: Current hours of access are as listed below or as posted by Board of Directors:

- |    |                   |  |
|----|-------------------|--|
| 1) | Monday – Thursday | 4:00 am to 12:00 am (Midnight)         |
| 2) | Friday            | 4:00 am to 12:00 pm (Noon)             |
| 3) | Sunday            | 12:00 pm (Noon) to 12:00 am (Midnight) |

All users must be 18 years of age and agree to use the equipment at their own risk. Proper attire shall be worn at all times by those using the Saunas and Fitness Room.

Dues certified homeowners shall be eligible to receive a passkey for access after completing a usage agreement and receiving an instruction sheet with an alarm code. Only one passkey shall be assigned to a household. **The replacement fee for a lost or misplaced passkey is \$25.00.**

Any owner using these areas shall be responsible for inspecting the sauna prior to use. A report to the business office at (901) 789-2940 shall be made by the user immediately upon opening either of the rooms and finding any damage or misuse of these areas.

Any homeowners or users proven to be at fault for irresponsible conduct, loss or damage to property or false alarms will be charged accordingly. The authorizing homeowners will be responsible for any abuses occurring from the use of their assigned passkey. Each user of the facility is responsible for securing and locking the area if they are the last to leave. If not the last to leave, they are required to inform the user remaining that they are leaving. **The fine for false alarms is \$25.00.**

Any homeowner or responsible party using these areas and having information as to the source of damage caused in these areas or to the equipment, shall be required to report said damages immediately to any member of the Board of Directors. Failure to report damage will result in financial liability.

Homeowners using these facilities and common areas are responsible for keeping the area clean of all extraneous material. Everything carried into the sauna, exercise room, and bath or placed in the lockers shall be removed by each party after use. Exercise equipment should be wiped down after each use with anti-bacterial wipes provided for the convenience of users. No food is allowed in these areas; however, beverages are allowed that are in spill proof covered containers.

The use of the sauna is open only to homeowners and their guest(s). Guest(s) are to be accompanied at all times. The homeowner shall be held financially liable for any damages caused by them or their guest(s).

If a homeowner or user is found to be in non-compliance with these rules, the homeowner shall be required to turn in their passkey and will forfeit use of these facilities.

## **Section 9.0 – RENTAL OF FACILITIES**

### **Section 9.1 – Guest Suites**

Two suites shall be available for rental to dues certified homeowners.

#### **Section 9.1.1 – Available Rental Dates and Times**

The dates available for rental are Monday – Sunday. Check-in is between 12:00 noon and 3:00 pm for a daily period of 24 hours. An executed rental contract is required at least two weeks prior to the first rental date.

#### **Section 9.1.2 – Deposits and Rental**

The deposit for the rental of each suite is \$100.00 and the rental is \$50.00 per night.

#### **Section 9.1.3 – Major Accommodations**

Each suite shall include at least a Queen Bed, a Twin Bed, a Dresser, a Night Stand, a Cable Color TV with remote control, a Microwave, a Refrigerator, and two Lamps along with a full-bath.

#### **Section 9.1.4 – Deposit Refund**

To be eligible for a full-refund of deposit, rental areas are to be check-out in the same condition as upon check-in.

#### **Section 9.1.5 – Cancellation Policy**

If a suites rental contract is cancelled **60 days or more** prior to the first night's rental, the homeowner is entitled to the deposit and a **full refund** of the rental. If a suites rental contract is cancelled **less than 60 days but more than 30 days** prior to the first night's rental, the homeowner is entitled to the deposit and a **50% refund** of the rental. If a suites rental contract is cancelled **less than 30 days** prior to the first night's rental, the homeowner is entitled to the deposit but **no refund** of the rental.

#### **Section 9.1.6 – Maximum Attendance**

Attendance in a suite of the Club house is limited to a maximum of 3 persons. There shall be no outside congregating hours of the rental.

### **Section 9.2 – Banquet Room Rental**

The Clubhouse Banquet Room shall be available for rental to dues certified homeowners.

### **Section 9.2.1 – Available Rental Dates and Times**

The dates available for rental are Friday and/or Saturday. Check-in time is at 12:00 noon and check-out time is at 12:00 pm. An executed rental contract is required at least two weeks prior to the first rental date.

### **Section 9.2.2 – Deposits and Rental**

The deposit for the rental of the Banquet room is \$100.00 and the rental is \$400.00 per day.

### **Section 9.2.3 – Major Accommodations**

Rental of the Banquet room includes use of the full Kitchen, Small Meeting Room, Men's Bathroom, Women's Bathroom, additional half bath, 100 chairs, 8 6-foot tables, 2 2x4 foot tables, and 9-round tables.

### **Section 9.2.4 – Deposit Refund**

To be eligible for a full-refund of deposit, rental areas are to be check-out in the same condition as upon check-in.

### **Section 9.2.5 – Cancellation Policy**

If the banquet room rental contract is cancelled **60 days or more** prior to the first night's rental, the homeowner is entitled to the deposit and a **full refund** of the rental. If the banquet room rental contract is cancelled **less than 60 days but more than 30 days** prior to the first night's rental, the homeowner is entitled to the deposit and a **50% refund** of the rental. If the banquet room rental contract is cancelled **less than 30 days** prior to the first night's rental, the homeowner is entitled to the deposit but **no refund** of the rental.

### **Section 9.2.6 – Maximum Attendance**

Attendance in the Banquet Room of the Club house is limited to 100 persons as cited by Memphis Fire Department regulations. There shall be no outside congregating during banquet event hours.

### **Section 9.2.7 – Prohibited Parking**

Absolutely no parking is allowed on any grassy areas. .Parking allowed in circle in front of Clubhouse for 10 minute loading or unloading only. All other parking is to be in designated parking areas or on Diamond Street other adjacent streets.

## **Section 10.0 – COMMUNITY RULES VIOLATION COMPLAINT**

### **POLICY:**

It is the policy of the Gemstones Community Homeowners' Association to resolve violations in the most amicable, expeditious and informal manner possible. Gemstones Community's management company will try to resolve any alleged violation with a phone call or visit prior to any intervention by the Board. Enforcement procedures provide for increasingly formal steps where informal resolution is ineffective. Investigation and assembly of evidence are by the management agent, who shall at each stage, continue to attempt resolution. Final action is decided by the Board of Directors upon receipt of findings and recommendations of the management agent.

The management agent may initiate investigation of a covenant or rules violation upon written complaint of any homeowner, on its own, or upon request of the Board of Directors.

### **PROCEDURES AND STEPS:**

1. Apparent violation of Charter Documents observed by Developer management agent or brought to the attention of management agent by any Director or homeowner. (A written complaint is not required at this stage.)
2. Management Agent(s) may initiate investigations upon receipt of either oral or written complaint outlining the alleged violations and citing the applicable section of the covenants or policy resolutions.
3. The Management Agent shall initially make an informal inquiry into the alleged violation, including as required, a site visit, discussion with the complainant and alleged violator, a review of the covenants and policy resolutions, consultation with experts or public officials, or such other means as deemed appropriate.
4. If deciding further action is not warranted, the agent obtains the concurrence of the Board President and notifies the complainant and alleged violator.
5. If further action is warranted, the agent contacts the alleged offender outlining the violation, citing section violated, setting out steps necessary to cure the violation, explaining penalties for non-compliance, and setting a reasonable compliance deadline (typically 15 days).

6. If violation is still not resolved within the time frame cited above, the agent prepares a written Notice of Violation and a written Notice of Hearing which repeats the violation and citation, advises the offender of all evidence and potential witnesses, outlines the steps required to cure the citation, and sets a date, time and location for a hearing before the Board of Directors at least fifteen (15) days after certified delivery. Copies of notice of Violation shall be furnished to the Board, the person making the complaint, and any potential witnesses.

7. The Board holds a hearing and reviews the evidence whether or not the offending party appears. The offender shall be given the opportunity, after the violation and rule violated are again cited by the President, to make any statement, produce any relevant evidence, or call any relevant witnesses of his/her choosing, to show cause why adverse action should not be taken in the case.

8. After all evidence is presented, the Board shall render a decision, the offending party shall be advised in writing of the Board's determination.

## **Section 11.0 – SANCTIONS, PENALTIES, AND REMEDIES**

A number of sanctions, penalties and remedies are provided for by the Gemstones Community Charter Documents or are available in law for use by Gemstones Community Homeowners' Association to enforce compliance with the covenants and rules. These include, but are not limited to:

1. Imposition of Fines
2. Litigation for injunction, and
3. Mandatory claims

## **Section 12.0 – GCHA BUDGET, ASSESSMENT FEES AND FINANCIAL PROCEDURES**

As detailed in the preceding section, the GCHA administers many services provided to the residents. Each year, the GCHA compiles an annual budget.

This budget contains the estimates of revenues and expenses, which will result in a balance budget in the coming year, based on the services and programs offered.

The Board of Directors must also include in the budget adequate sums for reserves to cover unforeseen expenses, working capital, and the major repair or replacement of common facilities. Operating expenses and reserves together make up the expenses funded by annual assessments.

All homeowners will pay an annual assessment for those services and related expenses, which benefit all community residents. These include, but are not limited to, GCHA insurance policies; professional management services; audit and legal services; maintenance of landscaped common areas and recreational areas and replacement reserves for all improvements and amenities which serve the community.

The assessment obligation is legally an annual fee. (See page 29) ~~However, the Board of Directors will permit payment in four (4) equal installments, due on the first (1st) day of each quarterly assessment period. An assessment installment, which is not paid within ten (10) days following the due date, shall be considered delinquent. In such case, a late fee of ten dollars (\$10.00) will be charged to the lot owner in accordance with Administrative Resolution No. 1, adopted by the Board of Directors.~~

All of the amounts assessed against a home (or "lot") give rise to a lien on that home under the Declaration. If the assessments are not paid when due, the GCHA may perfect the lien by recording it in the Shelby County, Tennessee Office of Land Records. An owner cannot dispose of his home free of the lien and costs of collection. The GCHA may obtain payment of past due assessments by foreclosure of the lien (resulting in a forced sale of the lot) or by suing the lot owner.

If any assessments are delinquent for more than thirty (30) days, the Board of directors may accelerate the payments (i.e., declare immediately due and payable the total amount assessed against the owner for that fiscal year, but not yet paid).

Detailed assessment collection and enforcement procedures are set forth in Administrative Resolution No. 1. All homeowners are encouraged to become familiar with the terms of this resolution.

~~Each homeowner will receive assessment coupons for use in paying quarterly fees. Assessment coupons will be provided to each owner following settlement, and thereafter, prior to the start of each new fiscal year. The use of these coupons insure accurate and prompt credit to the correct account. All payments should be mailed using the mailing labels provided with the coupons. Questions concerning assessment billings should be directed to the GCHA's management agent.~~



The Declaration also permits the GCHA to levy a special assessment in any year for the purpose of defraying the cost of any capital construction, repair or replacement improvements. However, a special assessment cannot be imposed by the Board of Directors without an affirmative vote from a majority of the current GCHA membership, in accordance with the procedural requirements set forth in Article IV, Section 4 of the Declaration.

**GEMSTONES COMMUNITY**

**HOMEOWNERS' ASSOCIATION**

**BOOK OF RESOLUTIONS**

# **BOOK OF RESOLUTIONS**

<b><u>SECTION 1 - POLICY RESOLUTIONS</u></b>	<b><u>DATE ADOPTED</u></b>	<b><u>PAGE</u></b>
<u>No.</u>		
1	Book of Resolutions	
2	Policy Resolutions	
3	Administrative Resolutions/Guidelines	
4	General Resolutions	
5	Design Review Procedures	
6	Vehicle Policies	
7	Pet Policies	
8	Use of Lots, Living Units and Common Areas	
9	Pool and Tennis Court Operating Policies	
10	Architectural Design Review Procedures and Guidelines	
11	Sauna, Guest Area and Club House Policies	
<b><u>SECTION 2 - ADMINISTRATIVE RESOLUTIONS</u></b>		
1	Assessment Procedures	
2	Check Signing Procedures	
3	Committee Appointment Procedures	

# **GEMSTONES COMMUNITY HOMEOWNERS' ASSOCIATION**

## **POLICY RESOLUTION NO. 1**

### *RELATING TO TYPES OF BOARD RESOLUTIONS AND MANNER OF RECORDING*

WHEREAS, Article VII, Section 1(c) of the Bylaws states that “The Board of Directors shall have power to exercise for the GCHA all powers, duties and authority vested in or delegated to this GCHA and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation of the Declaration;” and

WHEREAS, there is a need for the Board of Directors to keep a record of the actions and decisions taken in the performance of its duties; and

WHEREAS, it is the intent of the Board of Directors to maintain a record of its decisions in addition to the customary Book of Minutes;

NOW, THEREFORE, BE IT RESOLVED THAT the Board shall create a Book of Resolutions which shall be an orderly and indexed record of the Rules and Regulations of the GCHA and of the resolutions that are adopted by the Board, specifically Policy Resolutions, Administrative Resolutions, Special Resolutions and General Resolutions as described below.

## **BOOK FORMAT**

The Book of Resolutions shall be composed of four main sections, one for policy Resolutions, one for Administrative Resolutions, one for Special Resolutions, and one for General Resolutions, such resolutions to be arranged in each section in order to their adoption. These resolutions shall be classified as follows:

### **A. Policy Resolutions**

Shall mean and refer to resolutions adopted by the Board of Directors, which specifically relate to the long-term governance of the GCHA, including, but not necessarily limited to, actions affecting Owners' property rights, actions affecting Owners' obligations, and protection of the equity of the GCHA and Owners. All Policy Resolution shall be recorded in Part I of the Book of Resolutions of the GCHA and attached to the Minutes of the meeting at which they were adopted.

### **B. Administrative Resolutions**

Shall mean and refer to resolutions adopted by the Board to deal with the internal operation and structure of the GCHA, including but not limited to financial procedures, committee terms of reference, etc. All Administrative Resolutions shall be duly recorded in Part II of the Book of Resolutions and attached to the Minutes of the meeting at which they were adopted.

### **C. Special Resolutions**

Shall include those resolutions adopted by the Board of Directors involving actions relative to questions or compliance by an Owner with the provisions of the GCHA's governing legal documents, or the book of Resolutions. Special Resolutions shall be duly recorded in Part III of the Book or Resolutions and attached to the Minutes of the meeting at which they were adopted.

### **D. General Resolutions**

Shall mean and refer to those resolutions adopted by the Board which relate to specific expenditures, single task actions, and other such general matters of the Board which have no continuing, far-reaching or precedent-setting implications. General Resolutions shall be recorded in Part 3 of the Book of Resolutions and attached to the Minutes of the meeting at which they were adopted.

## **FORMAT OF RESOLUTIONS**

The format of resolutions shall conform to the format set out on the attached Exhibit A.

## **RESPONSIBILITY**

The Secretary shall be responsible for maintaining the Book of Resolutions and providing to the Owners appropriate and prompt notice of any additions and changes.

## **INSPECTION**

The Book of Resolution shall be made available for inspection by any Owner or representative of one of the project's Mortgagees upon request, during normal business hours.

## **CONFLICTS**

If the Book of Resolutions conflicts with the Tennessee laws regarding Homeowners' Association or the GCHA's legal documents, those documents shall prevail, according to the following hierarchy: The State Laws, the Declaration, the Articles of Incorporation, the Bylaws, and the Book of Resolutions.

## **SEVERABILITY**

The invalidity of any portion of the Book of Resolutions shall not impair or affect in manner of validity, enforceability, or effect of the balance of the Book of Responsibility.

## **APPLICABILITY**

Wherever in this Book of Resolutions reference is made to the GCHA, such reference shall mean the GCHA and the Managing Agent where such authority is delegated by the GCHA to the Managing Agent.

## **COMPLIANCE**

All Owners shall comply with the provisions of the Book of Resolutions.

## **ENFORCEMENT**

The GCHA, Developer, any successor Developer, or any Owner shall have the right to enforce, by any proceeding set forth herein or at law or in equity, all provisions of the Book of Resolutions as well as the GCHA's governing legal documents. Failure by the GCHA, Developer, or any Owner to enforce any of the provisions of this Book of Resolutions shall in no event be deemed a waiver of the right to do so thereafter. A waiver of such rights shall be effective only pursuant to an instrument in writing signed by the party to be charged with such waiver and shall be limited to the particular provision contained herein which is expressly set forth as being waived.

## **VIOLATION AND NUISANCE**

Every act or omission whereby any provision of the Book of Resolutions 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 Developer, the GCHA, or any Owner.

## **VIOLATION OF LAW**

Any violation of any applicable governmental law, ordinance or regulations, pertaining to the ownership, occupation, or use of any portion of the Property is hereby declared to be a violation of this Book of Resolutions and is subject, at the discretion of the board, to any and all of the enforcement procedures set forth herein.

## **REMEDIES CUMULATIVE**

Each remedy set forth in this Book of Resolutions 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 Book of Resolutions shall be cumulative and not exclusive.

## **REFERENCE OF PRONOUNS**

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular and plural as the identity of the person(s) or entities may require.

## **METHOD OF ADOPTION**

The GCHA reserves the right to amend, modify, delete or replace any provisions set forth in this Book of Resolution at any time by a majority vote of the Board of Directors and recorded by resolution of the Board of Directors, unless specifically stated otherwise.

# **GEMSTONES COMMUNITY HOMEOWNERS' ASSOCIATION**

## **POLICY RESOLUTION**

### ***RELATING TO THE PROCESS OF CONSIDERING AND ADOPTING POLICY PROCEDURES***

WHEREAS, Article VII, Section 1(c) of the Bylaws states that "The Board of Directors shall have power to 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 Bylaws, the Articles of Incorporation or the Declaration;" and

WHEREAS, the Board deems it necessary to establish appropriate procedures for adopting and recording Policy Resolutions of the Board; and

WHEREAS, it is the intent of the Board of Directors to institute such rules and procedures;

NOW, THEREFORE, BE IT RESOLVED THAT the Board shall provide the proposed resolution(s) to each Board member at least seventy-two (72) hours prior to the Board meetings at which it is to be introduced and shall present the proposed resolution(s) at the Board meeting.

The proposed resolution(s) shall be set forth in or attached to the Minutes of the Board meeting. Unless otherwise noted in the Minutes, all Board members shall be deemed to be aware of the contents of the resolution(s) by virtue of such distribution. At that meeting the Board shall set a time, date, and place, such time to be no less than fifteen (15) days thereafter, for a hearing on the proposed resolution(s).

## **PUBLICATIONS**

The proposed Policy Resolution or a reasonable summary thereof shall be printed in the Association newsletter, or shall be distributed to all Owners with notice of time, date, place and agenda of the hearing as set by the Board.

## **CONSISTENCY**

The Secretary shall be responsible for reviewing the proposed resolution for consistency with previously-adopted resolutions and shall submit a report at the hearing. Legal counsel shall be consulted as to compliance with applicable law and consistence with the Association's governing legal documents.



## **HEARING**

Printed copies of the agenda, which shall include consideration of the proposed resolution, shall be available at the hearing. Copies of the full resolution shall be available at the hearing. Owners or their representatives shall have an opportunity to comment on the proposed resolution, subject to the guidelines announced at the beginning of the hearing. The Board may delegate to an appropriate committee the authority to conduct the meeting.

## **BOARD ACTION**

At a meeting of the Board, to be held no later than its next regularly scheduled meeting from the date of the hearing, the Board shall take action on the proposed Policy Resolution. To be adopted, the resolution must be approved by a majority vote of the Board of Directors. If the resolution is adopted, the Board shall announce the adoption in the official newsletter or mail or deliver to each owner a special announcement. The full resolution or a summary of the resolution shall be included in the newsletter or special announcement. An executed copy of the full resolution shall be placed in the Book of Resolutions. Any modifications, adoptions or annulments will require a republication by the Board within seven (7) days after the meeting, but are not subject to the hearing process.

## **WAIVER**

Policy Resolutions adopted by the initial Board of Directors appointed by the Declarant shall not be subject to Procedures I through IV above. The Board shall provide prompt and adequate notice to Owners for the existence of such resolutions and their content.

## **DURATION**

The effective date of resolutions adopted by the Board shall be fourteen (14) days from the date of publication to the community. Policy Resolutions shall remain in effect until such time as repealed or amended by the Board of Directors.

## **AMENDMENT**

To substantively amend a Policy Resolution, the Board will follow the procedures for adoption of a Policy Resolution.

# **GEMSTONES COMMUNITY HOMEOWNERS' ASSOCIATION**

## **POLICY RESOLUTION**

### ***RELATING TO THE PROCESS OF CONSIDERING AND ADOPTING GENERAL RESOLUTIONS***

WHEREAS, Article VII, Section 1(c) of the Bylaws states that "The Board of Directors shall have power to exercise for the Association all powers, duties and authority vested in and or delegated to this Association and not reserved to the membership by other provisions by these Bylaws, the Articles of Incorporation or the Declaration;" and

WHEREAS, the Board deems it necessary to establish appropriate procedures for adopting and recording General Resolutions of the Board; and

WHEREAS, it is the intent of the Board of Directors to institute such procedures;

NOW, THEREFORE, BE IT RESOLVED THAT the following guidelines for General Resolutions be adopted:

### **PROCEDURES FOR ADOPTION**

The proposed General Resolution shall be read and acted upon in any regular or special meeting of the Board. To be adopted, a General Resolution shall have the approval of the majority of the Directors present at a meeting at which there is a quorum.

### **BOOK OF MINUTES**

General Resolutions adopted by the Board of Directors shall appear in Part III of the Book of Resolutions and shall be attached to the Minutes of the meeting at which they were adopted.

# **GEMSTONES COMMUNITY HOMEOWNERS' ASSOCIATION**

## **POLICY RESOLUTION**

### **ARCHITECTURAL DESIGN REVIEW PROCEDURES AND GUIDELINES**

#### ***RELATING TO CHANGES TO LOTS, LIVING UNITS, OR COMMON ELEMENTS***

WHEREAS, Article VII, Section 1(c) of the Bylaws states that "The Board of directors shall have power to 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 Bylaws, the Articles of Incorporation or the Declaration;" and

WHEREAS, Article V, Section 1 of the Declaration of Covenants, Conditions and Restrictions of the Gemstones Community Homeowners' Association requires the appointment of an Architectural Review Board by the Board of Directors, to execute such powers and duties as set forth in the Association's Legal Instruments, including the review and approval, disapproval or modification of requests for alterations to the exterior appearance of Lots, Living Units or common Areas; and

WHEREAS, the Board deems it necessary to establish further guidelines and procedures for Unit Owners wishing to make changes to their Lots, Living Unit or Common Areas:

NOW, THEREFORE, BE IT RESOLVED THAT Policy Resolution No. 10 (Design Review Procedures and Guidelines) dated \* \_\_\_\_\_ is hereby adopted by the Board:

### **GENERAL**

No exterior alteration, addition, or change may be made to Lots, Living Units or the Common Areas without prior application to and approval of the Architectural Review Board, except as noted in this Resolution.

Certain changes and additions are prohibited by this Resolution.

All Owners are responsible for assuring that changes and additions are made only in accordance with the provision of this Resolution.

## **APPLICATION PROCEDURES**

### **Requirement for All Applications:**

Owners wishing to make any changes exterior changes must submit the proper written application to the Architectural Review Board with all appropriate sections completed, including required submissions.

All applications must be received at the offices of the Management Agent by 5:00 P.M. on the second Friday prior to the regularly scheduled Architectural Review Board meeting. Applications received after that time will be reviewed at the next meeting following the upcoming Architectural Review Board meeting.

Oral requests will not be considered.

Each alteration or addition must be specifically approved even though the intended alteration or improvement conforms to the Association's Founding Documents or this Resolution and when a similar or substantially identical alteration or addition has been previously approved.

Approval of any project by the Association does not waive the necessity of obtaining the required governmental permits.

Obtaining a governmental permit does not waive the need for Association approval.

The Association will not knowingly approve a project which is in violation of the local building or zoning codes.

Burden rests with applicant to demonstrate the acceptability of the proposal. Applicant must submit any submissions required by the Architectural Review Board for an alteration or improvement of the type proposed. Applicant may submit with the application any additional materials such as exhibits, petitions, photographs, expert' statements and the like that applicant deems appropriate. Applicant may request an opportunity to appear before the Architectural Review Board in addition to any witnesses that applicant desires to also give testimony.

**Applications will not be considered for additional changes to any property on which there are existing violations and/or for which approved changes have not been substantially completed.**

## **Administrative Requirements:**

The Gemstones Community Architectural Review Board Committee will review all applications at their monthly meeting which is held on the \* \_\_\_\_\_ of every month at \* \_\_\_\_ P.M. at \* \_\_\_\_\_. In the event of a holiday, the meeting will be held on the \* \_\_\_\_\_ of each month.

The Architectural Review Board, shall act on the application and give notice to the applicant within sixty (60) days from receipt of a complete application, including all submissions required. The Architectural Review Board shall notify an applicant, in writing, of any deficiencies in the application which preclude consideration of the application and the commencement of the sixty (60) day review period.

The Architectural Review Board may delegate to a managing agent the responsibility for receiving applications. In such case, the review period shall commence upon the receipt of a complete application by the managing agent.

Applicant must inform the Architectural Review Board in writing of the date on which construction starts.

If applicant desires to make changes during construction, a revised application must be submitted to the Architectural Review Board, which shall promptly act upon the revised application.

Applicant must provide the Architectural Review Board with notice of completion of construction.

Upon completion, the Architectural Review Board may, at the request of the owner, inspect the living unit, Lot or Common Areas and, if satisfied that construction is in compliance with approved plans, will issue a Certificate of Compliance.

## **RESULTS OF REVIEW**

The applicant shall be informed in writing of the decision.

If the applicant fails to receive a reply indicating a decision within sixty (60) days from receipt of the application and submission, the request shall be considered to have been approved.

If a proposal is rejected, the reason(s) for disapproval shall be stated as part of the written decision.

The applicant may request reconsideration before the Architectural Review Board if new or additional information which might clarify the request or demonstrate its acceptability can be provided. Applicant must request such reconsideration by the Architectural Review Board before applicant may appeal a decision to the Board of Directors. The Architectural Review Board shall respond to a request for reconsideration of a decision within thirty (30) days from the date of receipt of such request.

If the application is denied after reconsideration by the Architectural Review Board, applicant may appeal the decision to the board of Directors, pursuant to the procedures for appeal set forth in Part IV of the Policy Resolution.

Copies of Requests for Review will be filed according to unit number, along with the written decision and a statement of action taken, if any. There will be a cross-index which categorizes cases into types, for future reference. This index shall be made available, upon request, to any Owner considering an alteration or improvement to his home or lot.

All approvals shall expire three (3) months after the date of approval if the item approved has not been started.

The exterior of any new structure and the related grounds must be substantially completed in accordance with the plans and specifications approved by the Architectural Review Board within six (6) months after construction has commenced, except that the Committee may grant extensions where completion is impossible or is the result of matters beyond the control of the owner or builder, such as strikes, casualty losses, national emergencies or Acts of God.

**GEMSTONES COMMUNITY HOMEOWNERS' ASSOCIATION**

COMMUNITY RULES VIOLATION COMPLAINT

Date \_\_\_\_\_

Property address of alleged violation: \_\_\_\_\_  
\_\_\_\_\_

Property owner (if known): \_\_\_\_\_

Applicable Covenant or Rule: \_\_\_\_\_

Description of violation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has resolution been attempted with property owner?      Yes \_\_\_      No \_\_\_

Witnesses or others who have knowledge of violation:

Name and address \_\_\_\_\_

Name and address \_\_\_\_\_

Name and address \_\_\_\_\_

Name and address of person  
filing complaint: \_\_\_\_\_

Telephone number: \_\_\_\_\_ (home) \_\_\_\_\_ (work)

\_\_\_\_\_  
(Signature)

# **GEMSTONES COMMUNITY HOMEOWNERS' ASSOCIATION**

## **NOTICE OF VIOLATION**

**CERTIFIED MAIL**

**DATE:** \_\_\_\_\_

**TO:** \_\_\_\_\_

The \* \_\_\_\_\_, acting for and on behalf of the members and Directors of the GCHA, has completed an inquiry into the violation of the Gemstones Community covenants and rules reported by a Community Rules Complaint dated \_\_\_\_\_, a copy of which was previously furnished to you. On the basis of our inquiry, which included the opportunity for you to put forth your version of the situation, we have determined that you are in violation of the covenant or rule indicated below, and that the violation is continuing.

**Address of Violation:** \_\_\_\_\_

**Covenant or Rule violated:** \_\_\_\_\_

**Type of violation:** \_\_\_\_\_

**Witnesses and/or evidence considered by the Committee include:**

\_\_\_\_\_  
\_\_\_\_\_

You are hereby offered the opportunity to appear before the Association Board of Directors to offer evidence as to why the Association shall not impose sanctions or penalties, or initiate legal action. At the hearing, you will be afforded the opportunity to make any statement, produce any relevant evidence, or call any relevant witness of your choosing. You will be notified of the vote of the decision of the Board within ten (10) days of the hearing.

**Date, Time, and Place of Hearing:** \_\_\_\_\_

\_\_\_\_\_

**Copy to: Board of Directors and Complainant**





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This Instrument Prepared By and Return To:  
Black Bobango & Morgan  
530 Oak Court Drive, Suite 345  
Memphis, TN 38119

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

GEMSTONES COMMUNITY HOMEOWNERS' ASSOCIATION, INC.

THIS DECLARATION (the "Declaration") is made, published and declared as of this 21st day of August, 1998, by Delta Diamond Land Development, L.L.C., a Tennessee limited liability company (the "Declarant" or Developer"), and any and all persons, firms or corporations hereinafter acquiring any of the within described property:

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

WHEREAS, the Developer has caused to be prepared a plan for the development of the Property, to be known as "Gemstones Community" into residential lots, together with certain common areas for the use, benefit and enjoyment of the owners of the lot in common with each other (the form of which plan is attached hereto as part of Collective Exhibit A); and

WHEREAS, the Developer has caused a plat of Phase I of the Diamond Estates Subdivision within Gemstones Community to be filed in Plat Book 71, Page 52, in the Register's Office of Shelby County, Tennessee ("Plat"), a copy of which is attached hereto as Exhibit B; and

WHEREAS, it is to the benefit, interest and advantage of the Declarant, the Owners of the Lots (both as hereinafter defined), and of each and every person or other entity hereafter acquiring any interest in the Property that certain covenants, restrictions, easements, assessments and liens governing and regulating the use and occupancy of the same be established, fixed, set forth and declared as covenant running with the land;

NOW, THEREFORE, in consideration of the premises, the Declarant does hereby publish and declare that all or any portion of the Property described in Collective Exhibit A is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations (and subject to all easements, conditions, restrictions, etc., as set out herein and in the Plat, as such Plat will be amended from time to time as the Developer further subdivides the Property to create more Lots within the Gemstones Community subdivision), all of which are declared and agreed to be in furtherance of a plan for the development and improvement of the said Property, and the said covenants, conditions, restrictions, uses, limitations and obligations shall run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any person or legal entity

THIS INSTRUMENT IS BEING RERECORDED TO ADD EXHIBIT B

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acquiring or owning any interest in any portion of the said Property or any improvements thereon, their grantees, successors, heirs, executors, administrators, devisees, and assigns.

ARTICLE I.  
DEFINITIONS

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

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

Section 2. "Common Area" shall mean all real property and improvements thereon owned by the Association for the common use and enjoyment of the Members of the Association. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is to include the areas denoted as Common Area on the Plat attached hereto as Exhibit B, as the Plat is amended from time to time.

Section 3. "Declarant" shall mean Delta Diamond Land Development, L.L.C. with a mailing address of Post Office Box 30755, Memphis, Tennessee 38130, its successors and assigns. "Declarant" shall be synonymous with "Developer" for purposes of this Declaration.

Section 4. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereto, as this Declaration may, from time to time, be amended in accordance with its terms.

Section 5. "Improvements" shall mean the structures, walls, pavement, plantings and other additions built or placed on the Lots. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within said Lot. In the event that, by reason of construction, settlement, reconstruction or shifting of the Improvements, any minor part of the Improvements reasonably intended for a particular Lot lie outside that Lot, an easement of use shall apply thereto in favor of the Lot to be benefitted.

Section 6. "Lot" shall mean and refer to the plots of land designated with Numbers 1 through 485, inclusive as shown on the Plat attached hereto as Exhibit B, as the Plat is amended from time to time. For all purposes hereunder, it shall be understood and agreed that Declarant shall be the Owner of all of said Lots, save and except only those particular Lots which Declarant conveys in fee simple title by recordable deed from and after the date hereof. Ownership of a Lot hereunder shall include an undivided pro rata interest in the Common Area owned by the Association.

Section 7. "Member" shall mean and refer to every person who holds membership in the Association.

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Section 8. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation; provided, however, that the purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

Section 9. "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 10. "Property" or "Properties" or "Subdivision" shall mean that real property described in Collective Exhibit A attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

## ARTICLE II. PROPERTY

Section 1. Property Subject to Declaration. That certain real property defined as the Property herein which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration located in Shelby County, Tennessee, and which is more particularly described in Collective Exhibit A attached hereto and made a part hereof.

Section 2. Sewers and Drainage. The sewers and drainage within the Subdivision which are built but not yet operational are, and shall remain, public sewers and drainage, and have been or will be dedicated to the City of Memphis or the appropriate governmental body.

## ARTICLE III. THE ASSOCIATION

Section 1. Members. Every Person, as defined, who is a record Owner of a fee or undivided fee interest of any Lot within the Property shall be a Member of the Association, as defined, provided, however, that anyone who holds such interest solely as security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot within the Subdivision. Ownership of such Lot shall be the sole qualification for membership.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of a Lot, each Owner of a Lot being entitled to one (1) vote for each Lot owned, except the Developer, which shall be initially entitled to three (3) votes for each Lot owned by it. After the expiration of four (4) years from the date of the conveyance of the first Lot from Developer to a purchaser, Developer shall only be entitled to one (1) vote for each Lot still owned by it. Where two or more persons own a Lot, the vote allocated to that Lot shall be cast by the one authorized by such two or more Owners, and in the event of failure of such authorization, one (1) vote shall be recorded for the Lot. Where only one (1) of two (2) or more Owners of a Lot is present in person at a meeting,

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such one shall be presumed to be authorized by all Owners of said Lot and shall be entitled to cast the vote with respect for that Lot, such person or group shall be entitled to cast one (1) vote for each Lot owned.

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

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

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

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

#### ARTICLE IV. PROPERTY RIGHTS

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

- (a) The right of the Association to suspend any enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed

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thirty (30) days for any infraction of its published rules and regulations;

- (b) The right of the Association to provide for and establish easements and right-of-ways on all streets, and to regulate parking, and motorized and non-motorized vehicular traffic within the Subdivision.
- (c) The right of the Association, in accordance with its Charter and Bylaws, to borrow money for the purposes of improving the Common Area which the Association is to maintain;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, transfer or mortgage shall be effective unless an instrument signed by Members entitled to at least two-thirds (2/3) of the votes hereof has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance of such dedication or transfer.
- (e) No conveyance or encumbrance of the Common Area shall prevent any Lot Owner from using the Common Area for ingress and egress to his Lot.

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

ARTICLE V.  
MAINTENANCE AND REPAIR

Section 1. Association Responsibilities. The Association shall provide and pay for all maintenance and expenses for the Common Area; the construction and maintenance of the subdivision monuments and fence; and the landscaping of the Common Area. The Association may also contract for the maintenance of the individual yards on each Lot in the Subdivision, if any, shall also be paid for by the Association.

Section 2. Individual Lot Owners.

- (a) Interior Maintenance. Each Owner of a Lot shall be responsible for all interior maintenance, painting, repairs and upkeep on his Lot and the Improvements thereon.
- (b) Exterior Maintenance. As shown on Collective Exhibit A attached hereto, it is the intent of the Developer that there shall be four hundred eighty-five (485) residential Lots within the Subdivision. In order to retain the appearance of the development, no exterior maintenance, repairs or replacements which substantially alter the exterior

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appearance of a lot shall be commenced for the improvement of an individual lot unless permission is obtained from the Architectural Control Committee, as hereinafter defined.

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

#### ARTICLE VI. ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements; and (3) emergency assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual, special and emergency assessments, together with interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

Section 2. Annual Assessments and Carrying Charges of the Association. Each Member of the Association shall pay to the Association an annual sum (hereinafter sometimes referred to as "assessment" or "carrying charges") equal to the Member's proportionate (1/485th) of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:

- (a) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any; and
- (b) The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any; and
- (c) The cost of extended liability insurance and the cost of such other insurance as the Association may effect; and
- (d) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve for replacements; and

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- (e) The estimated cost of repairs, maintenance and replacements of the guard house, fence and landscaping in the Common Areas and any other item the Association may be responsible for; and
- (f) The cost of yard maintenance should the Association elect to contract for every Lot.

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

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

Section 4. Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of Members or Property of Members, the Board of Directors, acting pursuant to this section, may declare an emergency assessment in such amount payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount and time of payment, shall be governed by all other provisions of this Declaration. Such assessment shall be borne pro rata by all Members of the Association. The Board of Directors shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment is made in good faith.

Section 5. Non-Payment of Assessment. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. To evidence the lien of any unpaid and delinquent assessments, the Board of Directors shall prepare a written notice setting out the amount of the unpaid indebtedness, the name of the Owner of the Lot, and description of the Lot. Said notice shall be signed by a member of the Board and recorded in the Shelby County Register's office. The personal obligation of the Member to pay such assessment shall, however, remain his personal obligation for the statutory period, and a suit to recover a money judgment for non-payment of any assessment



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levied thereof, may be maintained without foreclosing or waiving the lien created herein.

Any assessment levied pursuant to this Declaration or any installment thereof, which is not paid within ninety (90) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Tennessee, any may, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the said Board may fix. The Association may bring an action at law against the Member personally obligated to pay the same or foreclose the lien against the Lot or Lots subject to prior mortgages or deeds of trust upon the Lot or Lots, then belonging to said Member; in either of which events, the Association may collect from the said Member interest, costs and reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Lot Owner grants the Board of Directors of the Association irrevocably the power to sell his Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded mortgage or deed of trust upon the Lot. The Association is hereby authorized to take any and all courses of action available to them for collection of the assessment which the laws of the State of Tennessee allows. Any such sale shall be made after first advertising the sale of said property for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of Shelby, State of Tennessee, giving notice of the time and place of such sale and by written notice of the time and place of such sale to the Owner of the Lot at his last known address. Any sale of a Lot to enforce a lien for delinquent and unpaid assessment shall be free from equity of redemption, including the statutory right of redemption, homestead, and dower and all other exemptions, all of which are expressly waived by the Lot Owners; and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot, and prior recorded mortgages or deeds of trust.

The proceeds of any sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of expenses of protecting the Property and the expenses of litigation, attorneys' fees, and sales commission; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgage or deeds of trust (unless sold subject to said mortgage or deed of trust); and third, to the payment of all amounts due the Association under the terms of the Declaration and Bylaws; and the balance, if any, to the Lot Owner whose Lot is sold, and his assigns. Upon any default in the payment of any assessment, the Board of Directors shall have the right to all rents, issues, and profits from the Lot in default and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession in the same manner as a mortgagee entering its lien by whatever means available, including the power of sale granted herein or filing suite for foreclosure in the appropriate court.

All rights, remedies, and privileges granted to the Board of Directors or a Lot Owner, pursuant to any terms, provisions and covenants or conditions of the Declaration and Bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election

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of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party by the Declaration and Bylaws or at law or in equity.

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

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

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

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

Section 8. Subordination and Mortgage Protection. NOTWITHSTANDING any other provisions hereof to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Lot shall be subordinate to and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such interest made in good faith and for value received, provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a foreclosure or any other proceeding in lieu of foreclosure. Any such delinquent assessments which are extinguished pursuant to the foregoing provisions may be reallocated and assessed to all Owners as a common expense, including the purchaser at foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment which said lien, if any claimed shall have the same effect and be enforced in the same manner as provided herein.

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

Section 9. Additional Default. Any recorded first mortgage secured by a Lot in the Subdivision may provide that any default by the mortgagor in the payment of any assessment levied

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pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby), but the failure to include such a provision in any such mortgage shall not affect the validity or priority thereof, and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 8 of this Article shall not be altered, modified, or diminished by reason of such failure.

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

Section 11. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots upon written notification by Declarant or its agent. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Until December 31, 1999, the maximum assessment shall be \$25.00 per Lot per month. After December 31, 1999, the assessment shall be fixed by the Board of Directors as set out in Section 2 of this Article VI.

## ARTICLE VII. ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. An "Architectural Control Committee" is hereby established. The initial committee shall consist of five (5) persons appointed by Declarant. These five individuals shall serve for a period of two (2) years, or until they resign from the Committee by written notice to the Board of Directors of the Association. Upon the expiration of two (2) years from the date hereof, or the earlier resignation of the appointees, the Board of Directors of the Association shall then appoint the Architectural Control Committee, which shall be composed of five (5) or more individual Lot Owners. The affirmative vote of a majority of the membership of the Architectural Control Committee shall be required to adopt or promulgate any rule or regulation, or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein.

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

The Architectural Control Committee may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on the Lots including,

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without limitation the exterior lighting and planting any may issue statements of policy with respect to approval or disapproval of the architectural styles or details or other matters which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Architectural Control Committee at any time and no inclusion in or omission from or amendment of any such rule or statement shall be deemed to bind the Architectural Control Committee's discretion as to any such matter, but no change of policy shall affect the finality of any Lot of any plans or specifications previously submitted to and approved by the Architectural Control Committee but such approval shall not be deemed a waiver by the Architectural Control Committee in its discretion to disapprove such plans or specifications or any features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot.

Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter provided that the plans and specifications as approved and any condition attached to any such approval have been adhered to and complied with in regard to all structures, fences, or barriers on the uses of the Lot in question.

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

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

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

Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by the Architectural Control Committee, the Architectural Control Committee shall, upon written request of the Owner thereof, issue a letter of compliance in form suitable for recordation, identifying such structure and the Lot on which such structure is placed and stating that the plans and specifications, location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation and recording of such letter shall be at the expense of the Owner or Owners of such Lot. Any letter of compliance

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issued in accordance with the provisions of this paragraph shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value or as to any title insurer, such letter shall be conclusive evidence that all structures and the use or uses described therein comply with all the requirements of these restrictions and all other requirements as to which the Architectural Control Committee exercises any discretionary or interpretive powers.

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

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

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

Should a request to the Committee come from a Committee member, the other members of the Committee shall select a disinterested Lot Owner to take the place of the Committee member making the request.

## ARTICLE VII RESTRICTIVE COVENANTS

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

Section 2. Prohibited Uses and Nuisances. In order to provide for a congenial occupation of the homes within the Subdivision and to provide for the protection of the values of the entire development, the use of the residences shall be in accordance with the following provisions:

- (a) The Property is hereby restricted to residential dwellings for residential use. All buildings or structures erected upon the Property shall be of new construction, and no buildings or structures shall be moved from other locations onto the Property, and no subsequent buildings or structures, other than single family houses shall be constructed. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any portion of the Property at any time as a residence, either temporarily or permanently.
- (b) Each Lot shall be conveyed as a separately designated and legally described freehold

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estate subject to the terms, conditions and provisions hereof and all easements, restrictions and covenants set out in the Plat attached hereto as Exhibit B, as the Plat is amended from time to time.

- (c) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of said Lots, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.
- (d) No advertising signs (except one (1) of not more than six (6) square feet "for rent" or "for sale" sign per Lot), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on said Property, nor shall said Property be used in any way or for purposes which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof. No business activity of any kind whatever shall be conducted in any building or any portion for said Property; provided, however, the foregoing covenants shall not apply to the business activities, signs, and billboard or the construction and maintenance of buildings, if any, of Declarant, its agents, assigns and during the development and sales period of Lots in the Subdivision.
- (e) All equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of the private drives and street. All rubbish, trash or garbage, shall be regularly removed from the premises and shall not be allowed to accumulate thereon.
- (f) Without prior written approval and the authorization of the Architectural Control Committee, no exterior television or radio antennas of any sort shall be placed, allowed, or maintained upon any portion of the Improvements located upon the Property nor upon any structure situated upon the Property other than aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.
- (g) No action shall at any time be taken by the Association or its Board of Directors which any manner would discriminate against any Owner of Owners in favor of the other Owners.
- (h) No recreation vehicles or commercial vehicles, including but not limited to boats, boat trailers, house trailers, camping trailers, motorcycles, pick-up trucks, or similar type items shall be kept other than in the garage or otherwise screened from the view of neighbors or the streets.
- (i) Grass, weeds, vegetation and debris on each Lot shall be kept mowed and cleared at regular intervals by the Owner thereof so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines and debris and plants which die shall be promptly removed from such Lots. Developer, at its option and its discretion, may mow and have dead trees and debris removed from such Lots and the Owner of such

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Lot shall be obligated to reimburse Developer for the cost of such work should he refuse or neglect to comply with the terms of this paragraph.

- (j) No Owner or Owners shall allow garage doors to remain open for more than a reasonable time for vehicles entering or exiting to the garage and or reasonable periods for yard and residence maintenance.
- (k) No obnoxious or offensive trade or activity shall be carried on upon any Lot in this planned development nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners within the Subdivision.
- (l) No building material of any kind or character shall be placed or stored upon any of said Lots until the Owner is ready to commence improvements. Building materials shall not be placed or stored in the street or between the curb and property lines.
- (m) There shall be no violation of any rules which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the Bylaws authorized to adopt such rules.

ARTICLE IX.  
COMMON EASEMENTS

Section 1. Easement of Encroachment. The security wall shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to unintentional placement or settling or shifting of Improvements constructed within common space or within easement areas or altered thereon.

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

The Lots inclusive, are further subject to an easement to allow the Declarant and/or the Association ingress and egress over said Lots to construct, maintain, repair or replace the fences or landscaping improvements to be built on these Lots.

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ARTICLE X.  
INSURANCE AND CASUALTY LOSSES

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

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

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

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

- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
- (iii) That no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;
- (iv) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (v) That no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common



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

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

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

The individual Owners shall furnish a certificate of insurance to the Association or its manager.

## ARTICLE XII MORTGAGEE'S RIGHTS

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

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

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the unit number or address, any mortgage holder, insurer, or guarantor will be entitled

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to timely written notice of:

- (a) any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage;
- (b) any ninety (90) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which its holds the mortgage;
- (c) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Owners' Association;
- (d) any proposed act that required the consent of a specified percentage of mortgage holders.

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

The consent of at least sixty-seven (67%) percent of the votes and of the Declarant, as long as it owns any land subject to this Declaration, and the approval of eligible holders of first mortgages on individual Lots to which at least fifty-one (51%) percent of the votes subject to a mortgage appertain, shall be required to materially amend any provisions of the Declaration, Bylaws, or Charter of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, not including a subordination of said lien;
- (iii) reserves for maintenance, repairs, and replacement of the Common Area;
- (iv) insurance or fidelity bond;
- (v) rights to use of Common Area;
- (vi) responsibility for maintenance and repair of the Property;
- (vii) boundaries of any residential Lot;
- (viii) imposition of any right of refusal or similar restrictions of the right of any Owner to

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sell, transfer or otherwise convey his Lot;

- (ix) any provisions included in the Declaration, Bylaws, and Charter of Incorporation which are for the express benefit of the holders, guarantors, or insurers of first mortgages on residential units, which provisions do not set out a required number of votes to amend the particular provision.

### ARTICLE XIII GENERAL PROVISIONS

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, assigns, for a term of thirty (30) years from the date this Declaration is recorded, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten (10) years each. Unless specifically prohibited herein, this Declaration may be amended by an instrument signed by Owners holding not less than sixty-seven (67%) percent of the votes of the membership at any time. Any amendment must be properly recorded to be effective. During the first three (3) years from the date of the recording of this Declaration, any amendment must also be approved by the Declarant.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES THE RIGHT FOR A PERIOD OF THREE (3) YEARS FROM THE DATE HEREOF TO UNILATERALLY AMEND THIS DECLARATION TO SATISFY THE REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL, AND FOR THE REQUIREMENTS OF ANY MORTGAGE LENDER OR FOR ANY REASON THAT THE DECLARANT DEEMS ADVISABLE FOR THE ORDERLY DEVELOPMENT OF THE SUBDIVISION.

Section 2. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the past known address of the person who appears as a Member on the records of the Association at the time of such mailing.

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

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HS 11000

assessments hereunder.

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

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

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

Section 7. Rules and Regulations. The Association shall have the right, from time to time, to adopt rules and regulations (the "Rules") governing, among other things, the conduct of the Members, maintenance of the Improvements, and the like. The Members, their licensees, and visitors will at all times observe faithfully, and comply strictly with, the Rules. The Association may, from time to time, reasonably amend, delete, or modify the then existing Rules or adopt reasonable new rules and regulations for, among other things, the use, safety, cleanliness, and care of the Common Areas, the Lots and the Improvements. In the event of any breach of any of the Rules, the Association will have all remedies that this Declaration provides for default by a Member, and will in addition have any remedies available at law or in equity, including the right to enjoin any breach of the Rules. In the event of any conflict between the provisions of this Declaration and the Rules and regulations, the provisions of this Declaration shall govern.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, hereby executes this Declaration as of the day and year first above written.

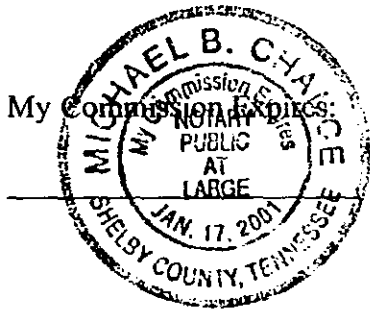
DELTA DIAMOND LAND DEVELOPMENT,  
L.L.C.

By: David Walker  
Its: Chief Manager

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, a Notary Public, in and for said State and County, duly commissioned and qualified, personally appeared David Walker, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Chief Manager of Delta Diamond Land Development, L.L.C., a Tennessee limited liability company, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by subscribing the name of the bank by himself as such officer.

Michael B. Chan  
Notary Public



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HS 7:76

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JOINDER OF MORTGAGEE

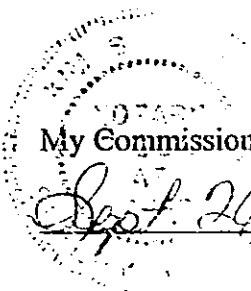
First Tennessee Bank National Association, herein called the mortgagee, the holder of a deed of trust on the Property joins in subordinating the lien of its deed of trust to the said Declaration. Said deed of trust remains prior to any liens created by said Declaration.

FIRST TENNESSEE BANK NATIONAL ASSOCIATION

By: [Signature]  
Title: President

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, a Notary Public, in and for said State and County, duly commissioned and qualified, personally appeared Jeff Caylor, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Vice President of First Tennessee Bank National Association, a national banking association, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by subscribing the name of the bank by him self as such officer.



My Commission Expires:

Sept. 26, 2000

[Signature]  
Notary Public

I:\Core\Suite8\DATA\DELTA\A\declaration 3

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## (The Property)

BEING A 172.112 ACRE PORTION OF THE DELTA DIAMOND LAND DEVELOPMENT, L.L.C., A TENNESSEE LIMITED LIABILITY COMPANY, PROPERTY AS SHOWN IN THE RECORDS OF THE SHELBY COUNTY, TENNESSEE REGISTER'S OFFICE IN INSTRUMENT NUMBER FD-5301 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A NAIL IN THE INTERSECTION OF THE CENTERLINE OF WEAVER ROAD WITH THE CENTERLINE OF HOLMES ROAD; THENCE ALONG THE CENTERLINE OF HOLMES ROAD THE FOLLOWING COURSES:

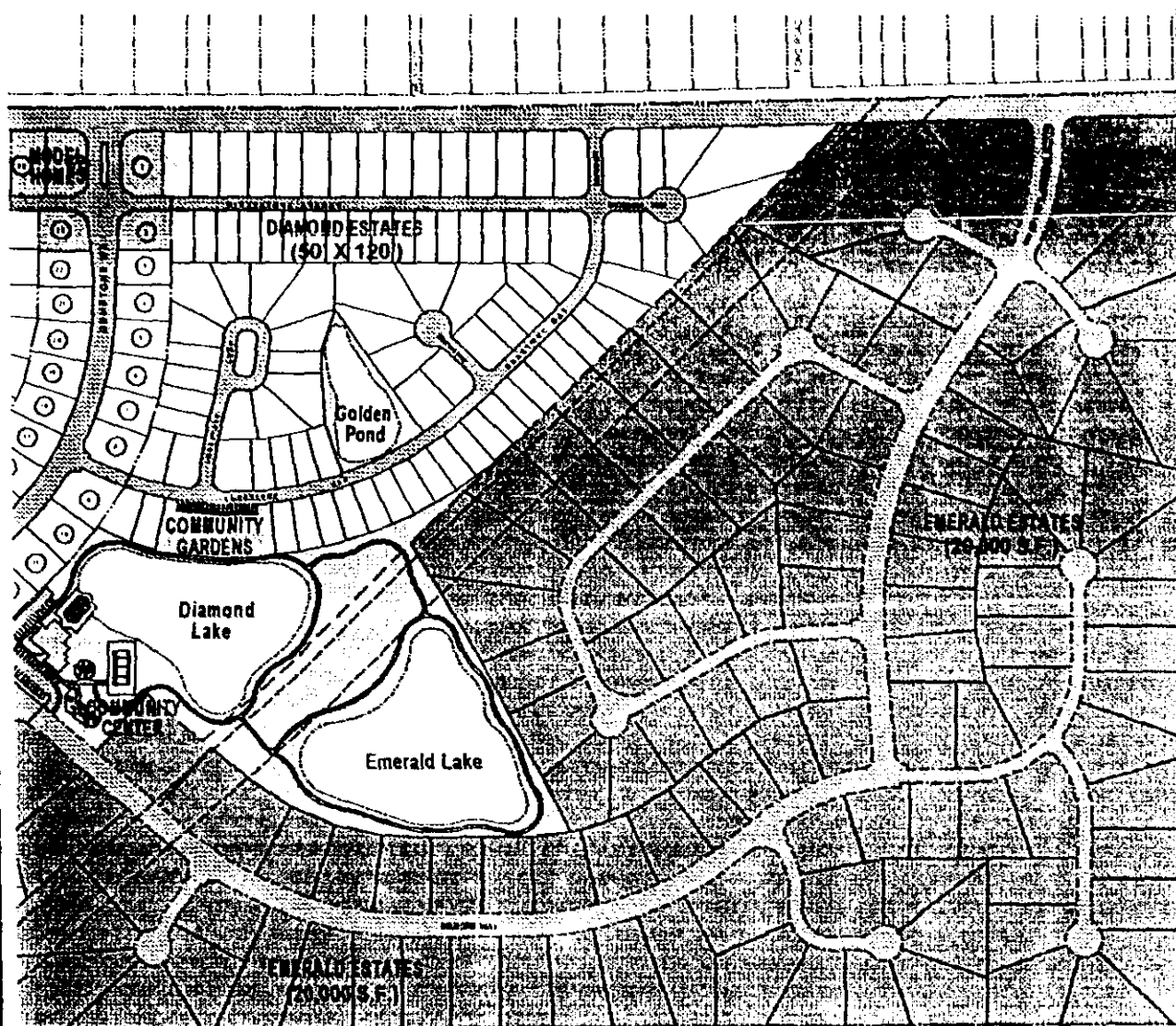
S 89°57'06" E, 375.01 FEET TO A NAIL; S 89°24'32" E, 889.66 FEET TO A NAIL; N 89°52'41" E, 536.17 FEET TO A NAIL; S 89°40'22" E, 871.72 FEET TO A NAIL; S 89°58'00" E, 907.07 FEET TO A NAIL; N 89°22'54" E, 401.74 FEET TO A NAIL; N 88°27'12" E, 558.00 FEET TO A NAIL; THENCE N 88°46'44" E, 137.86 FEET TO A POINT IN THE WEST LINE OF A 30 FOOT WIDE M.L.G.&W. GAS EASEMENT (BK.3892, PG. 531); THENCE ALONG SAID WEST LINE S 44°44'58" W, 1,819.93 FEET TO AN ANGLE POINT IN SAID WEST LINE; THENCE CONTINUING ALONG SAID WEST OF GAS EASEMENT S 47°39'58" W, 1,254.82 FEET TO A POINT IN THE NORTH LINE OF THE CITY OF MEMPHIS PROPERTY AS SHOWN IN INSTRUMENT NUMBER F4-6798; THENCE ALONG SAID NORTH LINE S 89°35'18" W, 2,454.28 FEET TO A NAIL IN THE CENTERLINE OF WEAVER ROAD; THENCE ALONG SAID CENTERLINE OF WEAVER ROAD N 00°11'23" W, 254.50 FEET TO A NAIL, SAID POINT BEING IN THE SOUTH LINE OF THE CITY OF MEMPHIS PROPERTY AS SHOWN IN BOOK 3795, PAGE 427; THENCE ALONG SAID SOUTH LINE N 89°48'37" E, 318.48 FEET TO A FOUND IRON PIN IN THE EAST LINE OF SAID PROPERTY; THENCE ALONG SAID EAST LINE AND THE EAST LINE OF THE TEXAS GAS PROPERTY AS SHOWN IN BOOK 3795, PAGE 428, N 00°11'23" W, 400.00 FEET TO AN IRON PIN IN THE NORTH LINE OF SAID TEXAS GAS PROPERTY; THENCE ALONG SAID NORTH PROPERTY LINE S 89°48'37" W, 318.48 FEET TO A NAIL IN THE CENTERLINE OF WEAVER ROAD; THENCE ALONG SAID CENTERLINE N 0°30'21" W, 996.54 FEET TO A NAIL; THENCE CONTINUING ALONG SAID CENTERLINE OF WEAVER ROAD N 00°19'58" W, 495.73 FEET TO THE POINT OF BEGINNING AND CONTAINING 172.112 ACRES.

COLLECTIVE EXHIBIT A

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# DIAMOND COMMUNITY

◆ DIAMOND ESTATES ◆ ◆ EMERALD ESTATES

345 LOTS 119 LOTS

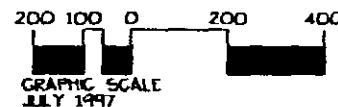
## S, TENNESSEE

DEVELOPED BY:

# Land Development Company

DAVID WALKER

Page 2 of 2



\*This plan reflects current plans and conditions as of July 1997 and is subject to change without notice

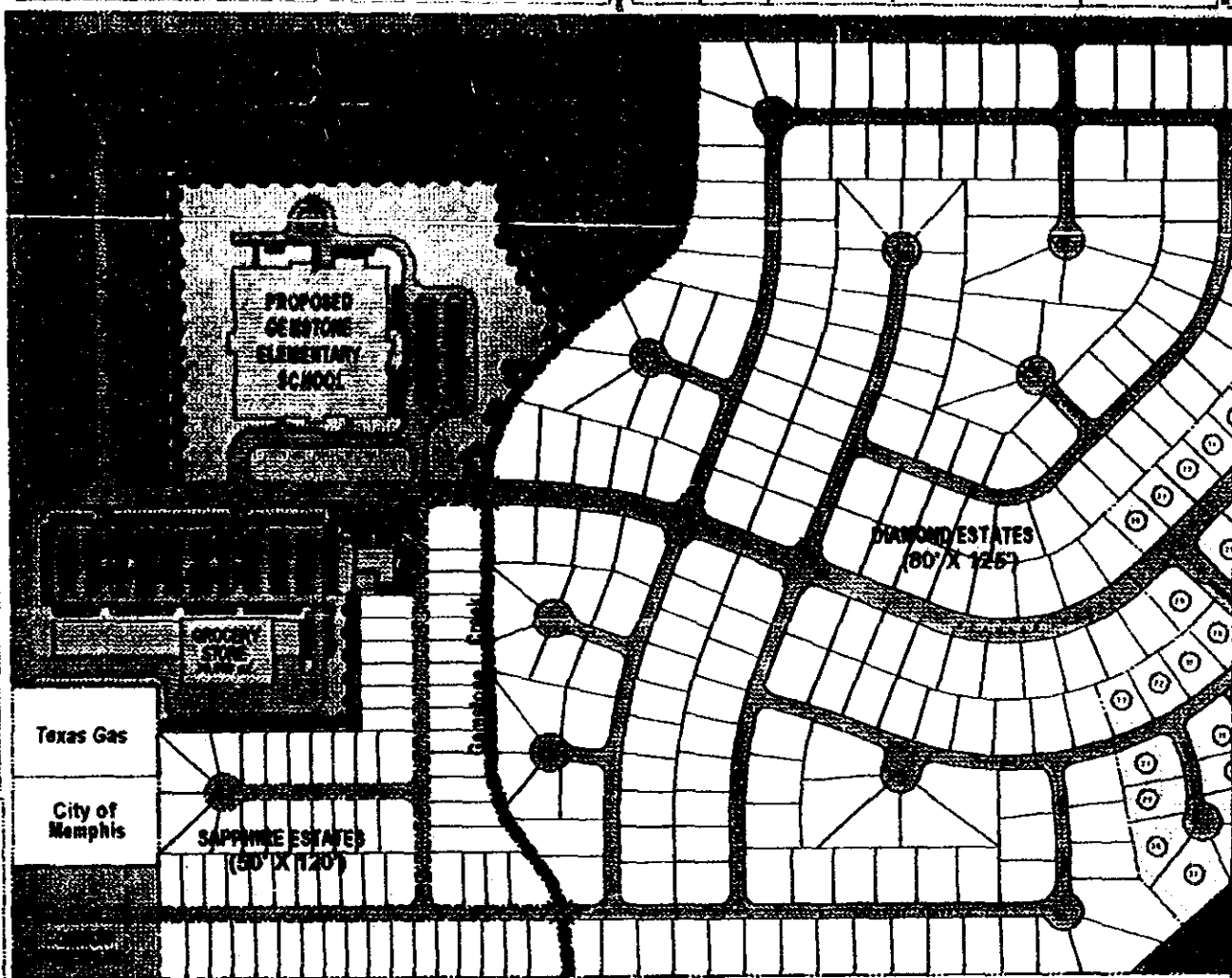
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HS 7476

HS 5996



G E M S T O N

RUBB ESTATES ♦ ♦ ♦  
68 LOTS

72 LOTS

M E M P H

Prepared By: ETI Corporation  
ENGINEERING • LAND PLANNING • LANDSCAPE ARCHITECTURE

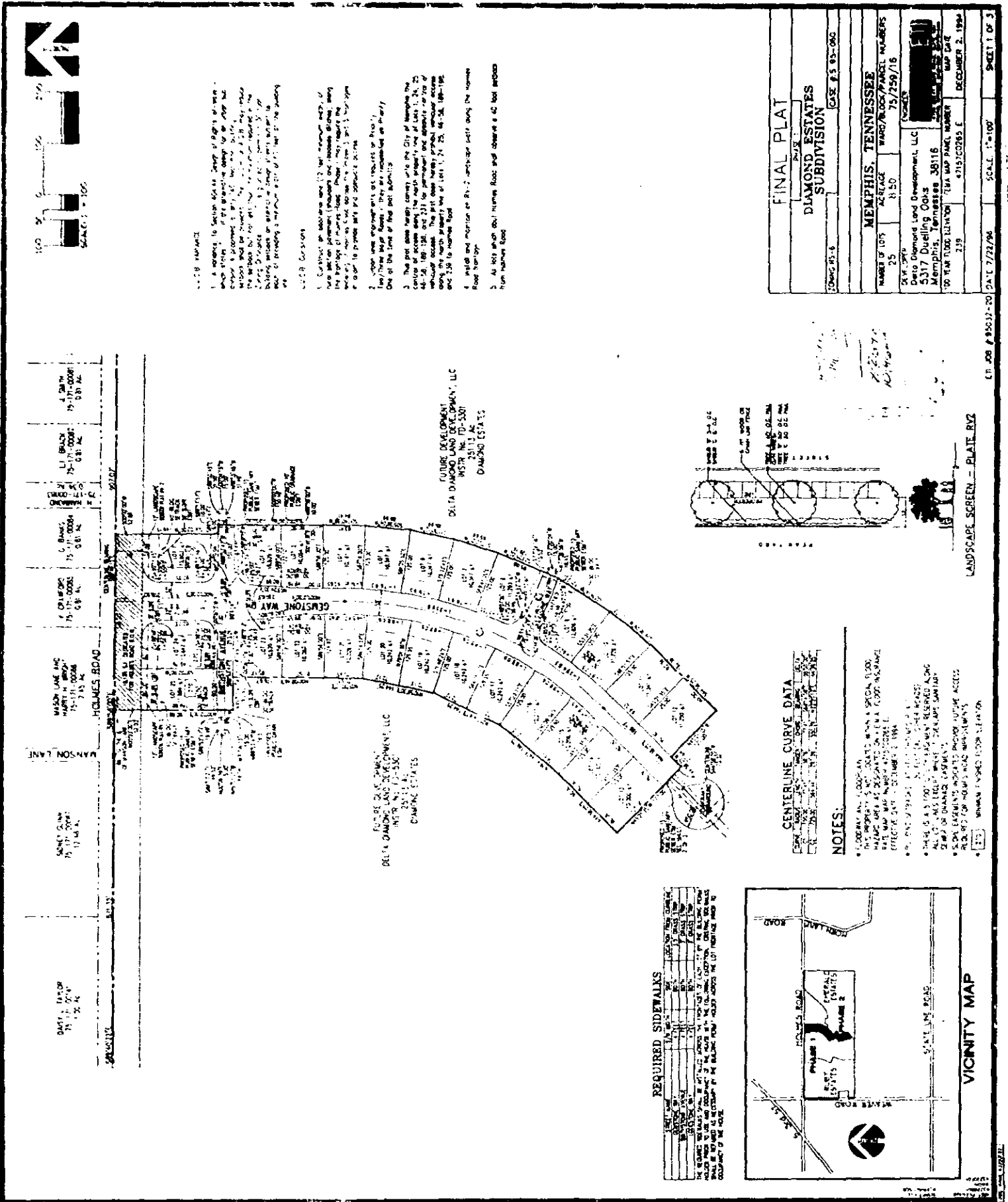


Delta Diamond

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ONR 40 1322 COLORADO 20401  
CFO FILE 1020401 CFO

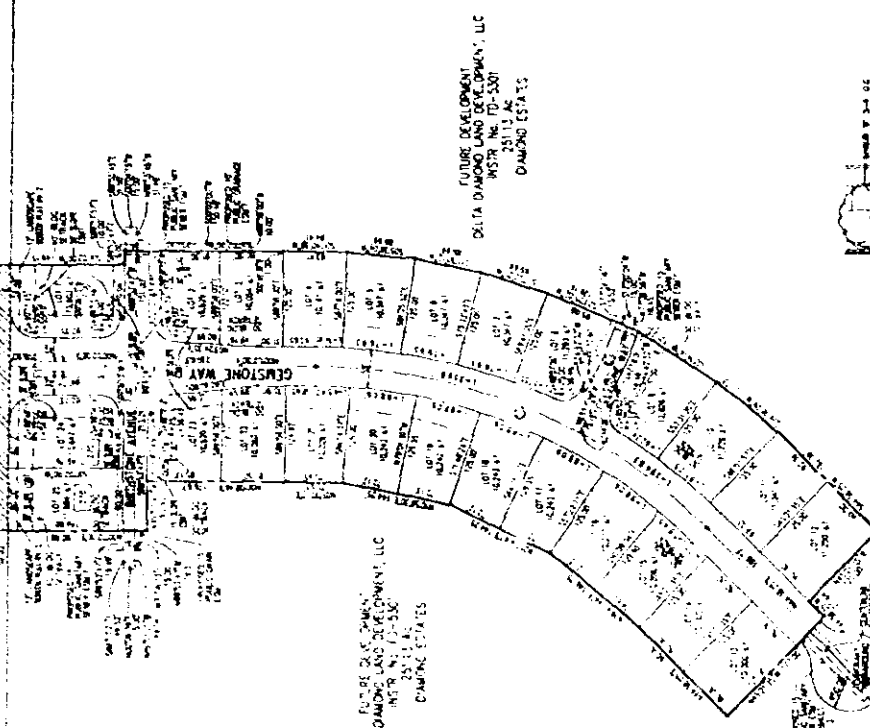
HS 7476



- NOTES:**
1. A reference to Section 20.01 of the Code of Ordinances of the City of Memphis, Tennessee, shall be construed to mean the provisions of the Code of Ordinances of the City of Memphis, Tennessee, which are contained in the Code of Ordinances of the City of Memphis, Tennessee, and which are contained in the Code of Ordinances of the City of Memphis, Tennessee, and which are contained in the Code of Ordinances of the City of Memphis, Tennessee.
  2. The plat shall be subject to the provisions of the Code of Ordinances of the City of Memphis, Tennessee, which are contained in the Code of Ordinances of the City of Memphis, Tennessee, and which are contained in the Code of Ordinances of the City of Memphis, Tennessee.
  3. The plat shall be subject to the provisions of the Code of Ordinances of the City of Memphis, Tennessee, which are contained in the Code of Ordinances of the City of Memphis, Tennessee, and which are contained in the Code of Ordinances of the City of Memphis, Tennessee.
  4. The plat shall be subject to the provisions of the Code of Ordinances of the City of Memphis, Tennessee, which are contained in the Code of Ordinances of the City of Memphis, Tennessee, and which are contained in the Code of Ordinances of the City of Memphis, Tennessee.
  5. All lots shall be subject to the provisions of the Code of Ordinances of the City of Memphis, Tennessee, which are contained in the Code of Ordinances of the City of Memphis, Tennessee, and which are contained in the Code of Ordinances of the City of Memphis, Tennessee.

<b>FINAL PLAT</b>	
DIAMOND ESTATES SUBDIVISION	
Case No. 15-000	Case No. 15-000
MEMPHIS, TENNESSEE	MEMPHIS, TENNESSEE
WARD/BLK/PARCEL NUMBERS	WARD/BLK/PARCEL NUMBERS
25	25
ACREAGE	ACREAGE
0.50	0.50
DATE	DATE
7/25/76	7/25/76
DEVELOPER	DEVELOPER
Delta Diamond Land Development, LLC	Delta Diamond Land Development, LLC
5317 Duelling Oaks	5317 Duelling Oaks
Memphis, Tennessee 38116	Memphis, Tennessee 38116
TO: WARD, BLOCK, PARCEL NUMBER	TO: WARD, BLOCK, PARCEL NUMBER
25	25
DATE	DATE
DECEMBER 2, 1994	DECEMBER 2, 1994

DAVEY, TAYLOR	75-171-0001	0.81 AC.
MURPHY, LANE	75-171-0002	0.81 AC.
LI, BRADY	75-171-0003	0.81 AC.
CHAMBERLAIN, C	75-171-0004	0.81 AC.
CHAMBERLAIN, F	75-171-0005	0.81 AC.
CHAMBERLAIN, G	75-171-0006	0.81 AC.
CHAMBERLAIN, H	75-171-0007	0.81 AC.
CHAMBERLAIN, I	75-171-0008	0.81 AC.
CHAMBERLAIN, J	75-171-0009	0.81 AC.
CHAMBERLAIN, K	75-171-0010	0.81 AC.



- NOTES:**
1. ALL LOTS SHALL BE SUBJECT TO THE PROVISIONS OF THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE, WHICH ARE CONTAINED IN THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE, AND WHICH ARE CONTAINED IN THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE.
  2. THE PLAT SHALL BE SUBJECT TO THE PROVISIONS OF THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE, WHICH ARE CONTAINED IN THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE, AND WHICH ARE CONTAINED IN THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE.
  3. THE PLAT SHALL BE SUBJECT TO THE PROVISIONS OF THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE, WHICH ARE CONTAINED IN THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE, AND WHICH ARE CONTAINED IN THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE.
  4. THE PLAT SHALL BE SUBJECT TO THE PROVISIONS OF THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE, WHICH ARE CONTAINED IN THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE, AND WHICH ARE CONTAINED IN THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE.
  5. ALL LOTS SHALL BE SUBJECT TO THE PROVISIONS OF THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE, WHICH ARE CONTAINED IN THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE, AND WHICH ARE CONTAINED IN THE CODE OF ORDINANCES OF THE CITY OF MEMPHIS, TENNESSEE.

**REQUIRED SIDEWALKS**

LOT NO.	REQUIREMENTS
1	10' WIDE SIDEWALK
2	10' WIDE SIDEWALK
3	10' WIDE SIDEWALK
4	10' WIDE SIDEWALK
5	10' WIDE SIDEWALK
6	10' WIDE SIDEWALK
7	10' WIDE SIDEWALK
8	10' WIDE SIDEWALK
9	10' WIDE SIDEWALK
10	10' WIDE SIDEWALK

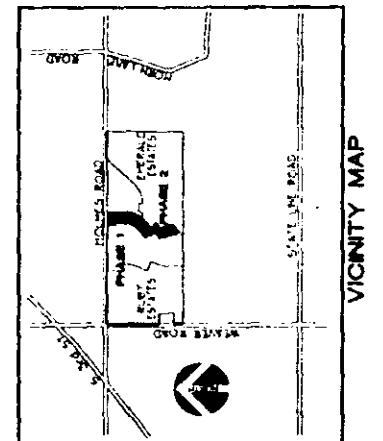
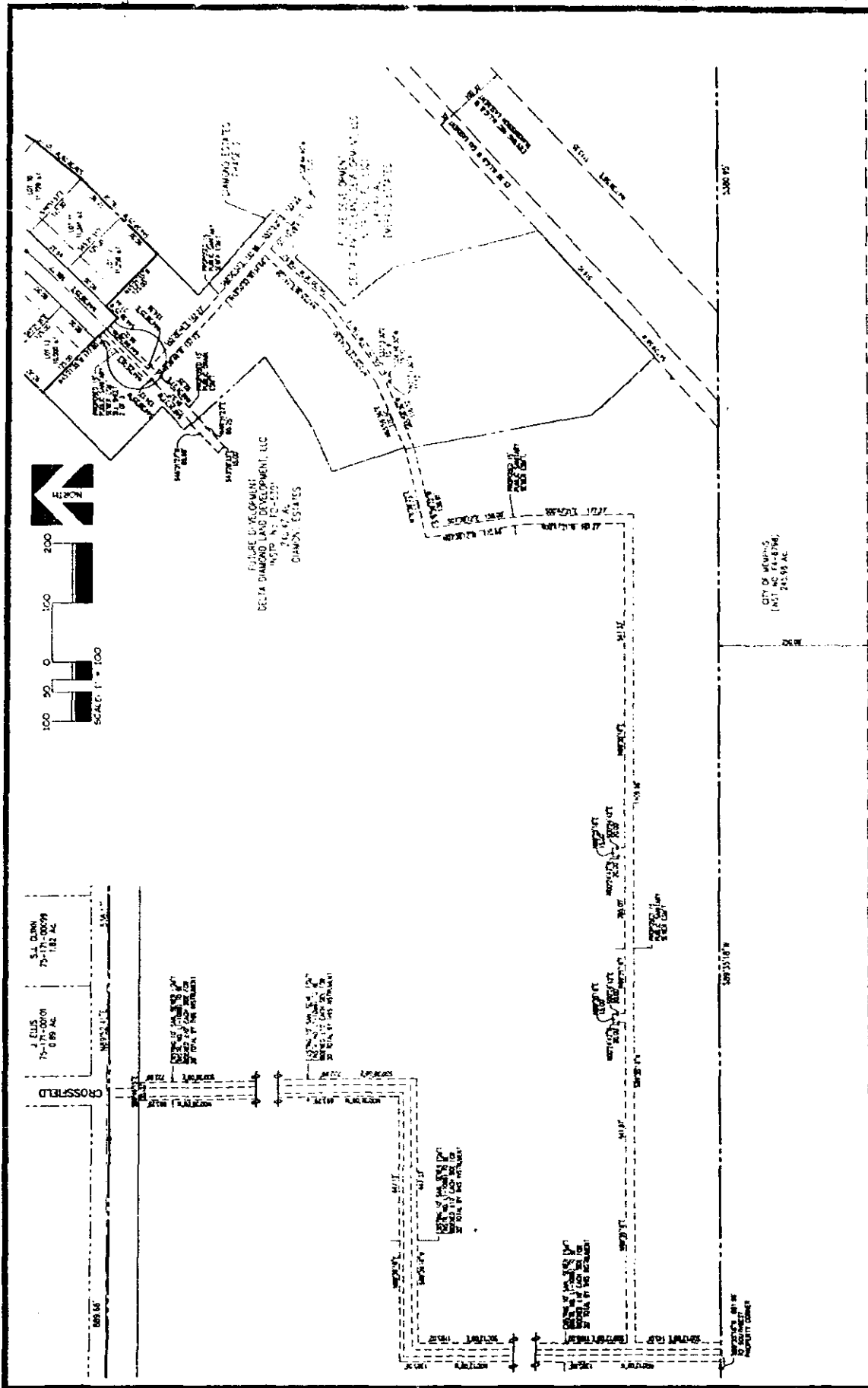


EXHIBIT B

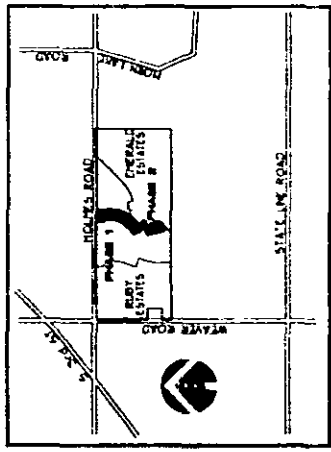
(29) Page 1 of 3

HS 7476



<b>FINAL EASEMENT PLAT</b>	
DIAMOND ESTATES SUBDIVISION	
72000085-8	CASE # 5 85-060
MEMPHIS, TENNESSEE	
NUMBER OF LOTS	25
ACRES	8.50
DATE	75/259/16
S'VENDOR: Delta Diamond Land Development, LLC	
S'BUYER: 5317 Duelling Oaks, Memphis, Tennessee 38116	
100 YEAR FLOOD ELEVATION: 4715.00085 E	
MAP DATE: DECEMBER 2, 1994	

NOTES:  
 1. FLOODING AND FLOODPLAIN...  
 2. THIS PROPERTY IS NOT LOCATED WITHIN A SPECIAL FLOOD...  
 3. BASE MAP NUMBER: 75-171-00001...  
 4. EFFECTIVE DATE: DECEMBER 2, 1994...  
 5. BOUNDING SETBACKS: 30 FEET (ADJACENT ROADS)...  
 6. THERE IS A 5 FOOT UTILITY EASEMENT REVEALED ALONG...  
 7. ALL LOT LINES EXCEPT WHERE IT OVERLAYS SAID UTILITY...  
 8. SCALE OF PLAT: 1" = 100'



SCALE: 1"=100' DATE: 7/22/74 SHEET 2 OF 3

**City's Certificate**

It is hereby certified that this plat is in full and correct compliance with the design requirements of the zoning ordinances, the Subdivision Regulations and the zoning conditions imposed on the land shown on the subject of approval. This certificate is issued under the authority of the City of Memphis, Tennessee, and the approval of the City of Memphis is hereby certified.

By David Walker Mayor  
FILED IN PLAT BOOK  
MAY 18, 1998

**Engineer's Certificate**

It is hereby certified that this plat is in full and correct compliance with the design requirements of the zoning ordinances, the Subdivision Regulations and the zoning conditions imposed on the land shown on the subject of approval. This certificate is issued under the authority of the State of Tennessee, and the approval of the State of Tennessee is hereby certified.



By Michael J. Swartz  
Tennessee Certificate No. 11074  
MAY 18 1998

**Surveyor's Certificate**

It is hereby certified that the survey shown on this plat is in full and correct compliance with the design requirements of the zoning ordinances, the Subdivision Regulations and the zoning conditions imposed on the land shown on the subject of approval. This certificate is issued under the authority of the State of Tennessee, and the approval of the State of Tennessee is hereby certified.



By James H. Nelson  
Tennessee Certificate No. 5797  
MAY 18 1998

**Official Public Utility Certificate**

This plat was approved by the Memphis City Council on 8/13/98 and by the Shelby County Board of Commissioners on 8/13/98.

By Michael D. Baker  
City of Memphis Development

**Notary's Certificate**

I, the undersigned, a Notary Public in and for the State of Tennessee and Shelby County of Tennessee, do hereby certify that the foregoing plat and conditions thereon were duly recorded in the Public Records of the County of Shelby, Tennessee, on the 18th day of May, 1998, and that the same are in full and correct compliance with the design requirements of the zoning ordinances, the Subdivision Regulations and the zoning conditions imposed on the land shown on the subject of approval. This certificate is issued under the authority of the State of Tennessee, and the approval of the State of Tennessee is hereby certified.

By Shirley B. Price  
Notary Public Expires 12/31/99

FINAL PLAT	
DIAMOND ESTATES SUBDIVISION	
MEMPHIS, TENNESSEE	WARD/BLOCK/PARCEL NUMBERS
75/259/16	
DEVELOPER	OWNER
Celis Diamond Land Development, LLC	
5317 Duelling Oaks	
Memphis, Tennessee 38110	
100 YEAR FLOOD ELEVATION	TDMA MAP PANEL NUMBER
239	4715/C2285 E
	MAP DATE
	DECEMBER 2, 1994

NO RECORD AT BOOK 12, PAGE 27  
RECORDING FEB 23 1998  
DATE 2/23/98  
FILED IN PLAT BOOK  
MAY 18 1998

ET JOB # 850320 DATE: 5/9/98 SCALE: 1"=100' SHEET 3 OF 3

Secretary of State  
Corporations Section

(Charter)

HS 7476

HR 0278

James K. Polk Building, Suite 1800  
Nashville, Tennessee 37243-0306

DATE: 07/17/98  
REQUEST NUMBER: 3537-0426  
TELEPHONE CONTACT: (615) 741-0537  
FILE DATE/TIME: 07/17/98 1007  
EFFECTIVE DATE/TIME: 07/17/98 1007  
CONTROL NUMBER: 0354323

TO:  
GEMSTONES COMMUNITY HOMEOWNERS' ASSN INC  
675 W HOLMES RD  
MEMPHIS, TN 38109

RE:  
GEMSTONES COMMUNITY HOMEOWNERS' ASSOCIATION, INC.  
CHARTER - NONPROFIT

CONGRATULATIONS UPON THE INCORPORATION OF THE ABOVE ENTITY IN THE STATE OF TENNESSEE, WHICH IS EFFECTIVE AS INDICATED.

A CORPORATION ANNUAL REPORT MUST BE FILED WITH THE SECRETARY OF STATE ON OR BEFORE THE FIRST DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE CORPORATION'S FISCAL YEAR. ONCE THE FISCAL YEAR HAS BEEN ESTABLISHED, PLEASE PROVIDE THIS OFFICE WITH THE WRITTEN NOTIFICATION. THIS OFFICE WILL MAIL THE REPORT DURING THE LAST MONTH OF SAID FISCAL YEAR TO THE CORPORATION AT THE ADDRESS OF ITS PRINCIPAL OFFICE OR TO A MAILING ADDRESS PROVIDED TO THIS OFFICE IN WRITING. FAILURE TO FILE THIS REPORT OR TO MAINTAIN A REGISTERED AGENT AND OFFICE WILL SUBJECT THE CORPORATION TO ADMINISTRATIVE DISSOLUTION.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR FILING, PLEASE REFER TO THE CORPORATION CONTROL NUMBER GIVEN ABOVE. PLEASE BE ADVISED THAT THIS DOCUMENT MUST ALSO BE FILED IN THE OFFICE OF THE REGISTER OF DEEDS IN THE COUNTY WHEREIN A CORPORATION HAS ITS PRINCIPAL OFFICE IF SUCH PRINCIPAL OFFICE IS IN TENNESSEE.

FOR: CHARTER - NONPROFIT

ON DATE: 07/17/98

FROM:  
BLACK, BOBANGO & MORGAN  
SUITE 345  
530 OAK COURT DR.  
MEMPHIS, TN 38117-0000

RECEIVED: FEES \$100.00 \$0.00  
TOTAL PAYMENT RECEIVED: \$100.00

RECEIPT NUMBER: 00002338922  
ACCOUNT NUMBER: 0191761

*Kelly C Darnell*

KELLY C. DARNELL  
SECRETARY OF STATE

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EXHIBIT C

HS 7476 HS 7496

HR 0278

CHARTER OF

GEMSTONES COMMUNITY HOMEOWNERS' ASSOCIATION, INC.

FILED JUL 17 1998

The undersigned, having the capacity to contract and acting as the incorporator of a corporation under the Tennessee Nonprofit Corporation Act, adopts the following Charter for such corporation:

1. The name of the corporation is Gemstones Community Homeowners' Association, Inc.
2. The corporation is a mutual benefit corporation.
3. The street address of the initial registered office of the corporation is 675 West Holmes Road, Memphis, Tennessee 38109, and the initial registered agent for the corporation at that office is David Walker.
4. The name and address of the incorporator is David Walker, 675 West Holmes Road, Memphis, Tennessee 38109.
5. The street address of the principal office of the corporation is 675 West Holmes Road, Memphis, Tennessee 38109.
6. The corporation is not for profit.
7. The corporation will have members.
8. The corporation does not contemplate pecuniary gain or benefit, direct or indirect, to its members. By way of explanation and not of limitation, the purposes for which it is formed are:
  - (a) to be and constitute a homeowners association (the "Association") to which reference is made in the Declaration of Covenants, Conditions, and Restrictions of Gemstones Community Homeowners' Association, Inc., as from time to time amended, and recorded in the Register's Office of Shelby County, Tennessee (the "Declaration"), to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the Bylaws, and as provided by law; and
  - (b) to provide an entity for the furtherance of the interests of the owners of property subject to the Declaration.
9. The corporation may be dissolved with the absent given in writing and signed by not less than sixty-seven (67%) percent of the members. Upon dissolution of the corporation, other than incident to a merger or consolidation, the assets of the corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this corporation was created. In the event that such dedication is refused acceptance, such assets shall be granted,

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HS 5296

HC 0278

conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

10. In furtherance of its purposes, the corporation shall have the following powers, which, unless indicated otherwise by the Declaration or Bylaws, may be exercised by the Board of Directors:

(a) all of the powers conferred upon nonprofit corporations by common law and the statutes of the State of Tennessee in effect from time to time;

(b) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in this Charter, the Bylaws, or the Declaration, including, without limitation, the following:

(i) to fix and to collect assessments or other charges to be levied against the property subject to the Declaration;

(ii) to manage, control, operate, maintain, repair, and improve the common areas and facilities, (including, without limitation, any limited common areas or reserved common areas described in the Declaration) and property subsequently acquired by the corporation, or any property owned by another, for which the corporation, by rule, regulation, Declaration, or contract, has a right or duty to provide such services;

(iii) to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration or Bylaws;

(iv) to engage in activities which will actively foster, promote, and advance the common interests of all owners at the development;

(v) to buy or otherwise acquire, sell, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the corporation;

(vi) to borrow money for any purpose as may be limited in the Bylaws;

(vii) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(viii) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests in such corporations, firms, or individuals;

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(ix) to adopt, alter, and amend or repeal the Bylaws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration; and

(x) the foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law.

11. To the fullest extent permitted by the Tennessee Nonprofit Corporation Act, as the same exists or as may be hereafter amended, a director of the corporation (or his or her estate, heirs and personal representatives) shall not be liable to the corporation or its shareholders or members for monetary damages for breach of fiduciary duty as a director. Any liability of a director of the corporation (or his or her estate, heirs and personal representatives) shall be further eliminated or limited to the fullest extent allowed by the laws of the State of Tennessee, as may hereafter be adopted or amended.

12. With respect to claims or liabilities arising out of service as a director or officer of a corporation, the corporation shall indemnify and advance expenses to each present and future director and officer (and his or her estate, heirs and personal representatives) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

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HS 7476

HS 5996

HR 0278

1998 JUL 15 10:11 AM

DATED, this 15 day of July, 1998.

*David Walker*  
Incorporator

I:\Corel\Suites\DATA\ELTADIA\CHARTER1.wpl

*[Faint handwritten text]*

HR 0278
Date 6
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5.00
2.00
7.00
6.00

HR0278

SHELBY COUNTY  
REGISTER OF DEEDS

98 JUL 31 PM 3:24

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HS 7476

HS 7096

BYLAWS  
OF  
GEMSTONES COMMUNITY  
HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I.

Section 1. Name. The name of this corporation is Gemstones Community Homeowners' Association, Inc. Its mailing address is P. O. Box 30755, Memphis, Tennessee, 38130. The corporation may have such other offices within or without the State of Tennessee as the Board of Directors or the Members may from time to time designate.

ARTICLE II.

Section 2. Applicability. These Bylaws and each provision thereof shall be applicable to all Lots and Members, as defined in the Declaration of Covenants, Conditions and Restrictions for Gemstones Community Homeowners' Association, Inc. (the "Declaration"), as shown on plat (the "Plat") recorded in Plat Book 171, Page 52, in the Shelby County Register's Office, as the Plat is amended from time to time.

ARTICLE III.

Section 1. Eligibility. The Owner or Owners of a Lot, who have become such in compliance with all of the requirements and conditions contained in the Declaration, including these bylaws, shall be entitled to attend and vote at all meetings of the Association. The Declarant shall be considered the Owner of each Lot which is unsold by it. Ownership of a Lot shall be the sole qualification for membership in the Association.

Section 2. Voting Rights. The Owner or Owners of a Lot shall be entitled to one (1) vote for each Lot owned at all meetings of the Association, except for the Declarant, which shall be entitled to three (3) votes for each Lot owned by it. After the expiration of four (4) years from the date of the conveyance of the first Lot from Declarant to the purchaser, Declarant shall only be entitled to one (1) vote for each Lot still owned by it. Where two (2) or more persons own a Lot, the vote allocated to that Lot shall be cast by the one authorized by such two or more Owners, and in the event of failure of such authorization, one (1) vote shall be recorded for the Lot. Where only one (1) of two (2) or more Owners of a Lot is present in person at a meeting, such one shall be presumed to be authorized by all Owners of said Lot and shall be entitled to cast the vote with respect for that Lot, such person or group shall be entitled to cast one (1) vote for each Lot owned.

EXHIBIT D

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ARTICLE IV

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

Section 2. Annual Meetings. The annual meetings of the Members of the Association shall be held at 7:00 P. M. on the second Tuesday in April of each year, beginning in 1999. At such meeting there shall be elected by secret written ballot of the Members a Board of Directors in accordance with the requirements of Section 5 of Article V of these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

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

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member of record, at his address as it appears on the membership book of the Association, if any, or if no such address appears, at his last known place of address, at least ten (10) days but not more than two (2) months prior to such meeting. Service may also be accomplished by the delivery of any such notice to the Member at his last known address by deposit in the box or slot for the United States mail. Notice by either such method shall be considered as notice served. Attendance by a Member at any meeting of the Members shall be a waiver of notice by him of the time, place and purpose thereof.

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

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

Section 7. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of Members representing a fifty-one percent (51%) majority of the total votes cast, in person or by proxy, provided a quorum exists, shall decide any question brought before such meeting, unless the question is one upon which, by express

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provision of statute or of the Charter, the Declaration, or of these Bylaws, a different vote is required, in which case such express provision shall govern and control. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

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

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

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

- (a) Roll call and certificate of proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of Officers, if any.
- (e) Reports of committee, if any.
- (f) Unfinished business.
- (g) New business.
- (h) Election or appointment of inspectors of election.
- (i) Election of directors.

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

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HS 7496

ARTICLE V.

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

Section 2. Initial Directors. The initial Directors shall be elected by the Developer and need not be Members of the Association.

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

To provide for:

- (a) Care and upkeep of the utilities, the fence, the common area, and any other properties charged to the care of the Association, including establishing reserves for repairs or replacements.
- (b) Establishment and collection of assessments and/or carrying charges from the Members and for the assessment and/or enforcement of liens therefor in a manner consistent with law and the provisions of these Bylaws and the Declaration.
- (c) Designation, hiring and/or dismissal of the personnel necessary for the good working order of the Subdivision and to provide services for the community in a manner consistent with law and the provisions of these Bylaws and the Declaration.
- (d) Promulgation and enforcement of such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of the Subdivision, all of which shall be consistent with law and the provisions of these Bylaws and Declaration.
- (e) Election of an Architectural Control Committee.

Section 4. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nomination 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

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than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

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

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

Section 7. Removal of Directors. At a regular meeting, or special meeting duly called for such purpose, any Director may be removed with or without cause by the affirmative vote of the majority of the entire membership of record and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. The term of any Director who becomes more than sixty (60) days delinquent in payment of any assessments and/or carrying charges due the Association shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 6 of this Article.

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

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

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

Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the President on two (2) days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the date, time and place (as hereinabove provided),

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but not necessarily the purpose, of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third (1/3) of the Directors.

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

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

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

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

#### ARTICLE VI.

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

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

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed either with or without cause, and his

successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

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

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

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

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

#### ARTICLE VII.

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



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commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director of the Association or former officer or Director of the Association may be entitled.

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

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

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

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

#### ARTICLE VIII.

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

(a) The cost of such insurance as the Association may effect.

(b) The cost of providing such legal and accounting services as may be considered necessary to the operation of the Subdivision.

(c) The cost of any and all materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like, which the Association secures in the discretion of the Board of Directors or by the vote of the Members shall be deemed necessary or proper.

(d) The cost of the maintenance or repair of any Lot in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common

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Area or the preserve the appearance or value of the Subdivision or is otherwise in the interest of the general welfare of all Owners of the Lots; provided, however, that no such maintenance or repair shall be undertaken without a resolution by the Board of Directors and not without reasonable written notice to the Owner of the Lot proposed to be maintained and provided, further, that the costs thereof shall be assessed against the Lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be sent promptly to the Owner of said Lot at which time the assessment shall become due and payable and a continuing lien and obligation of said Owner.

(e) All other items which are listed as responsibilities of the Association as found in the Declaration.

Section 2. Duty of Maintain. Except for maintenance requirement herein imposed upon the Association, the Owner of any Lot shall, at his own expense, maintain the interior and exterior of any improvements on his Lot, including all driveways and any and all equipment, and fixture, therein situate, and its other appurtenances, in good order, condition and repair, and in clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his Lot and appurtenances. All exterior maintenance is subject to approval of the Architectural Control Committee.

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

#### ARTICLE IX.

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

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

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

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

Section 5. Execution of Association Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the Association by such officers, agents, or other persons as are from time to time so authorized by the Board of Directors.

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

#### ARTICLE X.

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

#### ARTICLE XI.

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

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

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ARTICLE XII.

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

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

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

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

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

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

Section 7. Conflicts. These bylaws are subordinate to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the meanings ascribed to them in the Declaration. In the event of any conflict between these Bylaws and the Declaration, the provisions of the Declaration shall control, and in the event of any conflict between the Declaration and any of the laws of the State of Tennessee, the laws of the State of Tennessee shall control.

HS 5996	
No.	8
D/C	Dir # 1
Pgs.	40
Vol.	
STATE TAX	
REGISTER'S FEE	
RECORDING FEE	160.00
D/P FEE	20.00
WT <input type="checkbox"/> MISC FEE	
TOTAL	162.00
STATE OF TENNESSEE	
SHELBY COUNTY	
GUY E. BATES	
REGISTER	

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SHELBY COUNTY REGISTER OF DEEDS

98 AUG 26 AM 10: 57

40

43  
40

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No.	
D/C	DR # 15
Pgs.	44
Val	
STATE TAX	
REGISTER'S FEE	
RECORDING FEE	17.00
D.P. FEE	3.00
WT <input type="checkbox"/> MISC FEE	17.00
TOTAL	35.00
STATE OF TENNESSEE SHELBY COUNTY GUY B. BATES REGISTER	

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SHELBY COUNTY  
REGISTER OF DEEDS

98 AUG 28 AM 8:56