

THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MORRISON VILLAGE ASSOCIATION PLANNED COMMUNITY ("DCCR") HAS BEEN AMENDED TWO TIMES. THIS DOCUMENT CONTAINS THE CHANGES THAT WERE MADE BY THE AMENDMENTS AND HAS BEEN CREATED FOR EASE OF REFERENCING THE DCCR AS IT STANDS TO DATE. THIS IS NOT THE RECORDED OR EFFECTIVE DOCUMENTATION FOR MORRISON VILLAGE AND THIS DOCUMENT HAS NOT BEEN EXECUTED OR RECORDED AND IS NOT BINDING IN ANY WAY.

THIS DOCUMENT IS THE COMBINATION OF 3 SEPARATE DOCUMENTS AND IS MEANT TO REFLECT THE CONTENT OF THE ORIGINAL DCCR AND THE CHANGES MADE BY THE FIRST AND SECOND AMENDMENTS TO THE DCCR. THE ORIGINAL DCCR CAN BE FOUND OF RECORD IN THE SHELBY COUNTY, TN REGISTER'S OFFICE AT INSTRUMENT NO. 08151846, THE FIRST AMENDMENT TO THE DCCR CAN BE FOUND OF RECORD IN THE AFORESAID REGISTER'S OFFICE AT INSTRUMENT NO. 10002371, AND THE SECOND AMENDMENT TO THE DCCR CAN BE FOUND OF RECORD IN THE AFORESAID REGISTER'S OFFICE AT INSTRUMENT NO. 10004707. IN THE EVENT OF CONFLICT BETWEEN THIS DOCUMENT AND THE AFOREMENTIONED RECORDED DOCUMENTS, THE RECORDED DOCUMENTS SHALL CONTROL AND GOVERN.

**MORRISON VILLAGE ASSOCIATION
Planned Community**

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made this ____ day of _____, 2008, by and between **W.T. Price L.P., a Tennessee limited partnership** (hereinafter the "Declarant") and Morrison Village Association, Inc. (hereinafter the "Association");

WITNESSETH:

WHEREAS, the Declarant is the owner of approximately 14.834 acres of real property located in the Town of Collierville, Shelby County, Tennessee, as more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter the "Property"); and,

WHEREAS, the Declarant is in the process of developing all of said Property for office and commercial uses to be known as the "Morrison Village Planned Community" (hereinafter the "Project"); and,

WHEREAS, Declarant is in the process of developing Price Farms Planned Development, a 225 acre development of which the Property is a part, and the Property shall remain subject to the Price Farms Planned Community Declaration of Covenants, Conditions, and Restrictions recorded at Instrument No. GX 0564 and GX 6742, as amended ("Base Declaration"); and,

WHEREAS, it is the desire and intention of the Declarant to impose upon the Project mutually beneficial conditions, standards and covenants (hereinafter referred to as the "Declaration") under a general plan of improvement to provide for the preservation of the values and quality of the Project by continual maintenance of architectural features, common areas and elements and signage; and,

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values of the Project to create an entity which shall be delegated and assigned the powers of administering and enforcing this Declaration; and,

WHEREAS, Declarant has incorporated under the laws of the State of Tennessee a not-for-profit corporation, Morrison Village Association, Inc., for the purpose of exercising the aforesaid functions; and,

WHEREAS, it is the intention of the Declarant that this Declaration bind and benefit not only the purchasers of lots in the Project, but also their respective successors, heirs and assigns and that this Declaration shall enhance and protect the value, desirability and attractiveness of all such parcels to their mutual benefit.

NOW, THEREFORE, the Declarant hereby declares that the Project is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, easements, charges and liens, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of the Property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. All of the covenants contained in this Declaration shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the Property and shall inure to the benefit of each owner thereof.

ARTICLE 1 PURPOSE

The Declarant's purpose of this Declaration is:

(A) To establish the Project as a first-class office and business community with an overall setting that will not only reflect the demands of the Greater Memphis Metropolitan Area, but also exemplify the needs and desires of the residents of the Town of Collierville;

(B) To ensure proper, desirable use and appropriate development and

improvement of each parcel within the Project, all as determined by the Declarant;

(C) To protect the investment of the owner of each parcel against such improper development and undesirable use of surrounding parcels as will depreciate the value of the remaining parcels;

(D) To assure the erection of attractive improvements that utilize suitable building materials in appropriate locations, thereby preventing haphazard and inharmonious improvements;

(E) To ensure and maintain proper setbacks from streets and adequate open spaces between structures as well as interconnecting pathways, plantings and landscape criteria to encourage the overall character and theme established by the Declarant;

(F) To provide for a high quality of improvements on the Property that will protect both the Project itself and the surrounding community.

ARTICLE 2 LEGAL DESCRIPTION

The real property that is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration of Covenants, Conditions and Restrictions is located in the Town of Collierville, Shelby County, Tennessee, and comprises all of the parcels within or upon the property legally described as set forth in Exhibit "A" which is attached hereto and incorporated herein by reference.

ARTICLE 3 DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article 3 shall, as used in this Declaration, have the meanings herein set forth:

3.1 "**Architect**" shall mean a person holding a certificate of registration to practice architecture in the State of Tennessee under the authority of Title 62, Chapter 2, of the Tennessee Code Annotated.

3.2 "**Association**" shall refer to the Morrison Village Association, Inc., a Tennessee not-for-profit corporation, its successors and assigns.

3.3 "**Beneficiary**" shall mean a mortgagee under a mortgage as well as a beneficiary under a deed of trust.

3.4 "**Building**" shall include both the main portion of a structure and all

projections or extensions thereof, including garages, outside platforms and docks, canopies, porches, and outbuildings.

3.5 "**Board**" shall mean the Board of Directors of the Association, and any reference herein to any power, duty, right of approval, or any other right of the Association shall be deemed to refer to the Board and not to the membership of the Association.

3.6 "**Bylaws**" shall refer to the bylaws of the Morrison Village Association, Inc.

3.7 "**Class A Lot**" shall mean a Lot or Lots owned by a Lot owner with the exception of Declarant.

3.8 "**Class B Lot**" shall mean a Lot or Lots owned by the Declarant.

3.9 "**Common Area**" shall refer to all real property, easements and property rights owned by or assigned to the Association which has been approved by the Declarant for the common use and enjoyment of the members of the Association.

3.10 "**Common Elements**" shall include all Common Areas and all facilities, utilities and other improvements found or located in Common Areas, or otherwise, as are required by the Conditions of Approval or Final Plan Conditions.

3.11 "**Common Expenses**" sometimes referred to herein as "Common Charges," shall be all those expenses incurred or to be incurred by the Association in the performance of its duties and powers, including, without limitation, any charges, fees or assessments which may be charged by the Main Association (hereinafter defined).

3.12 "**Declarant**" shall mean **W.T. Price L.P., a Tennessee limited partnership** or the assignee to which it specifically assigns its rights as Declarant.

3.13 "**Declaration**" shall mean this Declaration of Covenants, Conditions and Restrictions for Morrison Village Planned Community, as it may from time to time be amended or supplemented.

3.14 "**Deed of Trust**" shall mean a mortgage as well as a deed of trust.

3.15 "**District**" shall mean and refer to the parcel of land identified by each Declaration of District recorded in the Register's Office of Shelby County, Tennessee as a District. There are no preconceived limits as to the size, number, or shape of said Districts which shall be created from the Property described on Exhibit "A". The Declarant may enlarge or reduce such District or create new Districts within such District by the recordation of a new or amended Declaration of District in the Register's Office of Shelby County, Tennessee. The subdividing of any District will not operate to establish any new districts unless approved by the Declarant. The Owner of a District or property within a District shall be entitled to representation and voting rights in the Association through an

elected or appointed Representative Member.

3.16 "**Fine**" shall mean the definition set forth in Article 14, Section 7 below.

3.17 "**Improvements**" shall mean buildings, outbuildings, underground installations, gradings, slope and drainage alterations, roads, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, windbreaks, landscaping, plantings, planted trees and shrubs, poles signs, lighting, loading areas, and all other man-made changes to the natural configuration and vegetation of the Property, whether above or below the land surface.

3.18 "**Lot**" shall mean and refer to any fractional part of the Property as subdivided on parcel maps recorded from time to time in the Shelby County Register's Office, State of Tennessee, with the exception of areas dedicated to the public use.

3.19 "**Main Association**" shall mean and refer to the Price Farms Owner's Association, Inc.

3.20 "**Member**" shall mean and refer to the Declarant, each Owner of a Lot and their permitted successors and assigns. "Member" shall exclude from its meaning and reference any municipality or governmental agency as an owner which holds title to any public rights-of-way in the property.

3.21 "**Mortgagee**" shall mean and refer to any person or entity secured by a mortgage or deed of trust on any lot and who has notified the Association of this fact. The term "mortgage" as used in this instrument shall include in its meaning not only a mortgage or deed of trust, but also a "sale-lease back", "sale-repurchase" or other bona fide financing transaction.

3.22 "**Occupant**" shall mean a lessee or licensee of an Owner, or any other person or entity other than the Owner in lawful possession of a Lot with the permission of the Owner.

3.23 "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any of the property being a part of the real estate described on Exhibit A attached hereto, 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.

3.24 "**Person**" shall mean any individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

3.25 "**Project**" shall refer to the Morrison Village Planned Community.

3.26 "**Property**" shall refer to that real property hereinabove described and such

additions, if any, as may be brought within the jurisdiction of the Association.

3.27 **"Representative Member"** shall mean and refer to the individual appropriately elected or appointed by the Owners to represent a District within the Association.

3.28 **"Residential Use"** shall mean any portion of the Property which has been restricted to residential use by the Declarant.

3.29 **"Rules and Regulations"** shall mean the rules and regulations of the Association.

3.30 **"Signage System"** shall mean the signage design package approved by the Town of Collierville and the Declarant.

3.31 **"Streetscape, Pedestrian, Utility and Street Maintenance Easement"** shall include all streetscape, pedestrian, utility and street easements required by the Conditions of Approval and located adjacent to street rights-of-way and medians in public rights-of-way.

3.32 **"Town"** shall refer to the Town of Collierville.

ARTICLE 4 BASE DECLARATION, MAIN ASSOCIATION, AND THE PROJECT AS A PRICE FARMS DISTRICT

4.1 As noted in the recitals contained hereinabove, the Project is not only subject to the terms and conditions of this Declaration, but it is also subject to the Base Declaration, and all amendments thereto.

4.2 Pursuant to that certain Declaration of District recorded or to be recorded in the Register's Office of Shelby County, Tennessee, the Project was established as a district within Price Farms under the Base Declaration. Pursuant to the terms and conditions of the Base Declaration, the Project, as a district, shall be entitled cast votes on all matters before the Main Association (based upon the 14.834 acres contained within the Project). Owners within the Project shall be required to appoint an Owner within the Project as its representative member to represent the Project on all matters before the Main Association, thereby delegating unto said individual the exclusive authority to represent and/or vote for the Project on any and all matters before the Main Association. The Owner appointed as the representative member for all Price Farms matters will be the only individual permitted to attend the meetings of the Main Association on behalf of the Project unless otherwise established by the Base Declaration. The Project as a district within Price Farms under the Base Declaration must cast its votes, through the representative member, as a whole with no conflicting votes from within the Project itself. If the Owners are unable to agree on a

unit vote on behalf of the Project for or against the question(s) before the Main Association, then the representative member for the Project must abstain from that particular vote.

ARTICLE 5 PROPERTY RIGHTS AND EASEMENT

5.1 Subject to the limitations hereinafter provided, every Owner shall have a right and easement of enjoyment in and to the Common Areas that shall be appurtenant and shall pass with the title to every Lot.

5.2 The Owner's right granted in Section 5.1 shall be subject to and limited by the following:

(A) Subject to 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 as are consistent with the purposes of the Association as set forth in this Declaration and in the Conditions of Approval.

(B) Limited in that each Owner shall have rights only in those Common Areas for which such Owner shall pay any portion of the Common Expenses related thereto.

(C) Subject to each Owner's responsibility to pay all Common Expenses, fees, Fines and other charges hereunder assessed by the Board (either annual, emergency or special) against that Owner's lot.

5.3 The Declarant hereby grants, establishes, covenants and agrees that the Project, and each Lot contained therein, and all Owners and permittees of the Project, shall be benefited and burdened by a nonexclusive, perpetual and reciprocal cross access easement for the nonexclusive right to access any drive aisles located, constructed and available on or within any Lot. In addition, the Declarant hereby grants, establishes, covenants and agrees that the Project, and each Lot contained therein excluding that certain Lot more particularly described on Exhibit "A" ("Lot 1"), and all Owners and permittees of the Project (except those of Lot 1), shall be benefited and burdened by a nonexclusive, perpetual and reciprocal cross parking easement for the nonexclusive right to park on or within any parking areas or parking spaces located, constructed and available on or within any Lot (excluding Lot 1). The foregoing easements are subject to the right of the Declarant and/or the Association to:

(1) promulgate rules and regulations for the use and enjoyment thereof;
and,

(2) suspend the enjoyment and voting rights of any Owner for any period during which any assessment for common expenses or any fine or other charge or fee hereunder remains unpaid beyond any applicable notice and cure period, or for any period

during which any infraction of its published rules and regulations continues.

As noted above, Lot 1 has the right to use and access the drive aisles located anywhere in the Project but does not have right to use or park in the parking areas and parking spaces outside Lot 1. In addition, as noted above, all Lots within the Project shall have the right to use the drive aisle(s) located within Lot 1 but shall not have the right to use or park on or within the parking area and parking spaces within Lot 1.

5.4 Notwithstanding the foregoing or anything else contained herein to the contrary, the Declarant and/or the Association shall have and hereby retain the right, but not the obligation, to create, install, construct, modify, repair, replace and maintain certain forms of infrastructure for the Project that may consist of curbs, streets, service drives, sidewalks, and other hardscape, landscaping, street trees, street lights, irrigation systems, brick pads, benches, bridges, street furniture, walking paths, parks, trash receptacles, drainage facilities, signage, utilities, and any apparatuses related thereto, as well as other improvements not necessarily enumerated above. Said improvements may be installed along the roads or within any Lot or in the Common Area of the Project if deemed necessary or desirable by the Declarant and/or the Association, in their sole and absolute discretion, for the overall functionality or aesthetics of the Project. Continued maintenance, repair and replacement of any of the aforementioned infrastructure or improvements, if and once installed, shall be the responsibility of the Lot Owner if located within said Owner's Lot or the responsibility of the Association if located within the Common Area. Any costs and expense associated with this right may be reallocated and assessed to all Owners by the Association as a common expense. Notwithstanding the foregoing, when exercising said right, neither Declarant nor the Association shall do anything which may reduce the number of parking spaces within the Property. In addition, neither Declarant nor the Association shall have the right to modify an existing building located on a Lot without the consent of the Lot Owner.

An easement is hereby granted to the Developer, the Association and to any construction or management company selected by the Developer or the Association to enter in or cross over the Common Areas or to enter or cross over any Lot to create, install, construct, modify, repair, replace and maintain any of the aforementioned forms of infrastructure or improvements located within any portion of the Project.

ARTICLE 6 OWNERS ASSOCIATION

The following sections of this Article 6 shall apply to the membership in the Association as that term is defined in Article 3, Section 3.2 above.

6.1 **Membership.** The Declarant shall become and remain a member of the Association upon the recording of this Declaration in the Register's Office of Shelby County, Tennessee. The Declarant shall cease to be a Member of this Association at its sole election and independent discretion with the tender of notice to the Association, thus

relieving the Declarant of any liability or obligation to the Association. Upon the withdrawal of membership as provided for elsewhere herein, the covenants and restrictions of this Declaration shall no longer apply as to the Declarant; however, it shall continue to govern and control the Association and its Members.

Every Owner shall automatically become and must remain a Member in good standing of the Association. Membership in the Association shall be appurtenant to and may not be separated from the ownership of a Lot.

6.2 Classes of Voting Members. The Association shall have two classes of voting membership defined as follows:

(A) **Class A.** Class A Members shall be all Members as defined hereinabove, with the exception of the Declarant. Class A Members shall be entitled to one (1) vote through their elected or appointed Representative Member, for every whole acre and a fractional vote equal to the fraction of acreage in which they own the interest required for membership. The District must cast its votes, through the Representative Member, as a whole with no conflicting votes from within the District itself. For example: If a District contains nine and one-half acres then the Representative Member of said District shall be entitled to nine and one half votes, all of which must be either cast for or against and no combination thereof, the question before the Association. Assuming that a Representative Member for a District is unable to agree on a unit vote on behalf of said District for or against the question(s) before the Association, then the Representative Member for such a District must abstain from that particular vote. The Representative Member may cast the votes of a District so long as the District is not in violation of any provision(s) under this Declaration.

(B) **Class B.** The Class B member shall be the Declarant, which shall be entitled to three (3) votes for every whole acre owned by the Declarant and a vote equal to three times the fractional acreage of the Property as described on Exhibit "A" for which it owns. For example, if a Class B Member owns nine and one half acres, then the Class B Member shall be entitled to twenty-eight and one-half votes. If a Class B Member owns one acre then that Class B Member shall be entitled to three votes. The Class B membership shall cease and be converted to Class A membership upon the first to occur of either the date when the total votes outstanding in the Class A membership are equal to the total votes outstanding in the Class B membership; or the date of filing of record in the Register's Office of Shelby County, Tennessee, an Affidavit by the remaining Class B Members assigning to Class A Member(s) all the rights and privileges of Class B Member(s). From and after the happening of the aforesaid dates, whichever occurs first, the Class B Member shall be deemed to be a Class A Member shall be entitled to one (1) vote for each whole acre contained in each Lot it owns. As of the date hereof, there is one (1) Class B Member.

6.3 Proxies. A Representative Member may appoint any other representative member under the Base Declaration or the Declarant or any other person permitted by law

or by the By-Laws as his proxy. Any proxy must be in writing and must comply with all requirements imposed by law or by the Association's By-Laws.

6.4 Voting, Quorum and Notice Requirements. The presence, either in person or by proxy, of at least fifty-one percent (51%) of the total votes of the Project 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 the Association. If the number of votes eligible to be cast drops below the quorum, and the question of a lack of quorum is raised, no business may thereafter be transacted.

6.5 Assignability. Any Owner may collaterally assign, as additional security, its voting rights to the beneficiary of a first lien deed of trust or first mortgage covering the lot or subdivided part thereof owned by an Owner. Any such assignment, however, shall not be effective until written notice thereof is actually received by the Association, together with evidence of said beneficiary's or mortgagee's entitlement to cast said votes.

6.6 Authority of the Association. In addition to the powers and authority granted to it by its Charter of Incorporation or this Declaration, and without limiting the generality thereof, the Association shall have the authority to operate, maintain or otherwise manage or provide for the operation, maintenance or management of the Common Areas and Streetscape, Pedestrian, Utility, and Street Maintenance Easements. Such authority shall include, but not be limited to, mowing, pruning, fertilizing, preservation, and replacement of the landscaping and the upkeep and maintenance of sprinklers, irrigation mains and laterals, sprinkler heads, equipment, water pumps, drainage areas, lakes, dams, private roads, pedestrian circulation system, perimeter landscape buffers, signs, lighting, fencing, pavers, planting boxes and other landscape amenities and improvements comprising or located on the Common Areas and Streetscape, Pedestrian, Utility, and Street Maintenance Easements.

6.7 Powers and Authority of the Association. The Association shall have all the powers of a non-profit corporation organized under the laws of the State of Tennessee, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Charter of Incorporation, the Bylaws, or this Declaration. It shall have the power to do any and all lawful things that may be authorized, required or permitted to be done by the Association under this Declaration, the Charter of Incorporation, and the Bylaws, and to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without Limitation:

(A) To levy and collect assessments on the Lots and/or Owners of Lots and to enforce payment of such assessments, all in accordance with this Declaration;

(B) To enter into contracts with Owners of Lots to provide landscape maintenance services to such Owners;

(C) To make reasonable Rules and Regulations for the operation of the

Common Areas and Streetscape, Pedestrian, Utility, and Street Maintenance Easements as specified herein and to amend them from time to time, provided that any Rule or Regulation may be amended or repealed by an instrument in writing signed by the majority of the total eligible votes of the membership of the Association;

(D) To enter into agreements or contracts with insurance companies with respect to insurance coverage for the benefit of the Association;

(E) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters;

(F) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;

(G) To enter into contracts, to maintain one or more bank accounts, and generally, to have all of the powers necessary or incidental to the operation and management of the Association;

(H) To sue or defend in any court, administrative agency or other tribunal on behalf of the Association and its members;

(I) To provide adequate reserves for repairs and replacements;

(J) To make available to each Owner within ninety (90) days after the end of each year an annual report;

(K) To adjust the amount collected and use any insurance proceeds to repair damaged or replace lost property; and, if proceeds are insufficient to repair damaged or replace lost property, to assess the members in proportionate amounts to cover the deficiency;

(L) To suspend the voting rights of a member for any period during which any assessment against such member's lot remains unpaid;

(M) To employ a manager or firm to manage the affairs and property of the Association (which may include an affiliate of Declarant), to employ independent contractors or such other employees as it may deem necessary (which may include an affiliate of Declarant), and to prescribe their duties and to set their compensation;

(N) To retain the services of legal and accounting firms;

(O) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation of such provisions or rules;

(P) To contract with any Owner (including without limitation the Declarant) for performance, on behalf of the Association, of services the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interests of the Association;

(Q) To levy and collect Fines for violations of this Declaration and to enforce payment of such Fines, all in accordance with this Declaration;

(R) To charge and collect fees for services rendered by the Main Association, Association, the ACC and their respective agents; and

(S) To take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder, for the operational protection of the Association or for the enforcement of this Declaration

ARTICLE 7 COVENANT FOR ASSESSMENTS

7.1 Creation of the Lien and Personal Obligation of Assessments.

(a) Assessments by Main Association. As noted in Article 4 hereinabove, the Project is subject to the Base Declaration and has been established as a Price Farms district under said Base Declaration. As such, the Project shall be charged certain assessments, fees, and charges by the Main Association in accordance with the terms and conditions of the Base Declaration. All amounts charged by the Main Association shall be a personal obligation of each Owner within the Project and a continuing lien upon each Lot within the Project. The amounts charged by the Main Association shall be allocated among the Owners in accordance with Section 7.3 hereinbelow. The Main Association, by itself or through the Association, shall be entitled to all rights and remedies set forth in the Base Declaration, this Article 7 or otherwise available at law or in equity in the event of nonpayment by any Owner or by the Project as a whole.

(b) Assessments by Association. The Declarant, for each Lot owned by it within the Project and the Owner of any Lot within the Project, their successors and assigns, including any purchaser at a judicial sale, hereby covenant (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance), and shall hereafter be deemed to covenant and agree to pay to the Association any annual assessments, fines, fees or charges, any special assessments for capital improvements or major repair; any emergency assessments; such assessments to be fixed, established, and collected from time to time as hereinafter provided (collectively, the "Assessments"). All such Assessments, together with interest thereon from the due date at the rate as decided by the Board, not to exceed the maximum allowable rate, and costs of collection thereof (including reasonable attorneys fees), shall be a charge on the

Lot and shall be a continuing lien upon the Lot against which such assessment is made, and shall also be a personal obligation of the Owner and the Lot. No Owner of a Lot may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or by abandonment.

7.2 Purpose of Assessments. The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, security and welfare of the Owners of Price Farms and in particular for the improvement and maintenance of the Common Areas and Streetscape, Pedestrian, Utility, and Street Maintenance Easements and of any easement in favor of the Association, including, but not limited to, the cost of taxes, insurance, labor, equipment, materials, management, maintenance and supervision thereof, as well as for such other purposes as are permissible activities of, and undertaken by, the Association.

7.3 Allocation.

(A) It shall be an affirmative and perpetual obligation of the Board to fix Common Expense assessments in an amount at least sufficient to maintain and operate the Common Elements as contemplated by this Declaration and the Bylaws of the Association. The amount of monies for Common Expenses of the Association and the manner of expenditure thereof shall be a matter for the sole discretion of the Board.

(B) Every Owner shall be deemed to covenant and agree to pay to the Association such sums, by way of annual or special Common Expense assessments contemplated herein or in the Bylaws. Declarant's obligation to pay such sums commences upon the recording of this Declaration; the obligation of all other Owners to pay such sums commences upon their acceptance of a deed or other conveyance for a lot, whether or not it shall be so expressed in any such deed or other conveyance.

(C) Common Expenses shall be allocated among the Owners as follows:

(1) Proportionate Share of Assessment and Carrying Charges of the Association. Each District established for Residential Use shall be assessed a proportionate share of all Assessments as provided herein in the same ratio that the acreage of the District bears to the total acreage of the Project, excluding public rights-of-way and excluding conservation areas.

Each District established for purposes other than Residential Use shall be assessed a proportionate share of all Assessments as provided herein in the same relation that the acreage of the District bears to the total acreage of the Project, excluding public-rights of-way and excluding conservation areas, with any Lots on which any permit for on-site construction has been obtained, having its acreage multiplied by three in determining that District's share of Assessments, but until such permit is obtained, the multiplier shall not become applicable. For example, if a District comprises 3.5 acres and has a building located on a one acre lot in that District that is under construction or

completed, that District shall be deemed to be 5.5 acres (1 acre times 3 plus 2.5 acres) for the purpose of allocating Assessments only and for no other purpose. Each and every Owner within a District at the time of that District's total assessment is personally liable to the Association and that District for a proportionate share of the District's total assessment in the same ratio that the acres of his/its Property bears to the total acreage of the District containing said Property, with any Lot on which construction of a building has been commenced or completed having its acreage multiplied by three in determining that Lot's proportionate share of the District's Assessment. Continuing the above example, that Lot would be liable for 54% of that District's share of Assessments (3 acres divided by 5.5). Declarant reserves the right to change this multiplier of 3 to another number.

(2) Annual Assessments and Carrying Charges of the Association.

Each Lot shall cause to be paid to the Association a sum (hereinafter sometimes referred to as "Annual Assessments" or "Carrying Charges") equal to the Lot's proportionate share of the sum required by the Association, as estimated by its Board of Directors to meet its annual expenses, payable, in advance, either in monthly or annual installments as determined by the Board of Directors, 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 liability insurance and the cost of such other insurance as the Association may determine;

(d) The cost of funding all reserves established by the Association, including when appropriate, a general operating reserve and/or reserve for replacements;

(e) The estimated and actual cost of all operating expenses, repairs, replacements, maintenance and replanting of the entry feature easement, conservation areas and other landscaped areas over which the Association has control, including, but in no way limited to the public rights-of-way and conservation areas; and

(f) The estimated and actual cost of enforcing and policing all the terms, covenants, conditions, restrictions and other duties and obligations contained in this Declaration.

The Board of Directors of the Association shall determine the amount of the Annual Assessment due from each Lot at least thirty (30) days in advance of each Annual Assessment, but may do so at more frequent intervals and revise the Annual Assessment should circumstances so require. Written notice of the Annual Assessment

shall be sent to every Owner. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

7.4 Special Assessments. In addition to the regular assessments authorized by this Declaration, 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 may consider necessary, provided that such assessment shall have the assent of the Owners representing two-thirds (2/3) of the total number of votes eligible to be cast. A meeting of the appropriate Owners shall be duly called for this purpose, written notice of which shall be sent to all Owners at least ten (10) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting.

7.5 Emergency Assessments. In the event of an emergency situation, condition or occurrence affecting the life, health, safety or welfare of Owners or the public, the Board, acting pursuant to this section, may declare an emergency assessment in such amount and payable at such time as the Board, 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, as provided for elsewhere herein, by all Owners. The Board shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment was made in good faith.

7.6 Date of Commencement of Annual Assessment. The annual assessments provided for herein shall commence as to all Lots as of the date of the conveyance of a Lot by the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

7.7 Non-Payment of Assessments. Any assessment, fine, charge or fee 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 against which such assessment is levied and shall bind such lot(s) and property in the hands of the then Owner of said Lot, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the Lot and Owner(s) to pay such assessment shall, however, remain personal obligations for the statutory period, and a suit to recover a money judgment for non-payment of any assessment levied, or any installment thereof may be maintained without foreclosing or waiving the lien herein created to secure the same.

Any assessment levied pursuant to this Declaration or any installment thereof which is not paid within ten (10) days after it is due may, upon resolution of the Board, bear

interest at a rate not to exceed the highest rate allowed under the laws of the State of Tennessee, and may, by resolution of the Board, subject the Owner obligated to pay the same along with such penalty or "late charge" as the Board may fix. The Board may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the Lot subject to prior Deeds of Trust ; in either of which event the Association may collect from said Lot and/or Owner interest, costs and reasonable attorneys fees. No Lot and/or Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Lot.

To evidence the lien of any unpaid and delinquent assessments, the Board of Directors of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the description of the Lot and the name of the Representative Member if known. Such a notice shall be signed by one of the Board of Directors and may be recorded in the Register's Office of Shelby County, Tennessee.

For the purpose of enforcing the lien of any unpaid and delinquent Assessment, each Lot, through its Owner, irrevocably grants the Board the power to sell all of the Lot or a portion thereof at public outcry to the highest bidder for cash. The Board is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded Deed of Trust or lease upon the property of such Lot. The Association is hereby authorized to take any and all action available for collection of the assessment which the laws of the State of Tennessee allow. Any such sale shall be made after first advertising the sale of the property for twenty-one (21) days by three (3) weekly publications in two (2) newspapers in the County of Shelby, State of Tennessee, one in the City of Memphis and the other in the Town of Collierville, giving notice of the time and place of such sale of the Lot. Any sale to enforce a lien for unpaid and delinquent assessments shall be free from the equity of redemption, statutory right of redemption, homestead, dower and all other exemptions, all of which are expressly waived by the 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 property, except real estate and ad valorem taxes assessed against the property and prior recorded leases and Deeds of Trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the property and the expenses of litigation, attorney's fees, and sales commissions; and second, to the payment of real estate and ad valorem taxes assessed against the property and any prior recorded Deeds 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 Owner whose property is sold, or his assigns. Upon any default in the payment of any Assessment, the Board shall have the right to all rents, issues and profits from the property in default and shall have the right to secure the payment through notice to those in possession of the property or by entry into possession in the same manner as the mortgagee entering into possession following default.

All rights, remedies and privileges granted to the Board or an Owner, pursuant to any terms, provisions and covenants or conditions of the Declaration or the

Bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not 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 or the Bylaws or at law or in equity.

The Association may require the Owner of a Lot which is delinquent on any assessment levied pursuant to this Declaration or is in default for the performance of any other obligation hereunder for a period in excess of sixty (60) days, to notify the holder of any and all Deed(s) of Trust on the Lot of any delinquency or default.

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

7.9 Priority of Lien. The lien established by this Declaration shall have preference over any other assessment, liens, judgments or charges of whatever nature, except as limited herein.

7.10 Subordination and Deed of Trust Protection. Notwithstanding any other provisions herein 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 Deed of Trust or lease 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 the sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure, and shall not in such instance apply to claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Owners and/or Lots. Such sale or transfer shall not relieve the purchaser at such sale from liability for any assessments thereafter becoming due, nor from the lien of 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 amendments to this Section shall affect the rights of the holder of any such Deed of Trust (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

7.11 Additional Default. Any recorded Deed of Trust secured by property shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such Deed of Trust (or the indebtedness secured thereby) but failure to include such a provision in any Deed of Trust shall not affect the validity or priority thereof, and the protection extended to the holder of such Deed of Trust (or the indebtedness secured thereby) by reason of this Declaration shall not be altered, modified, or diminished by reason of such failure.

ARTICLE 8 COVENANTS AND RESTRICTIONS FOR USE

8.1 Permitted and Conditional Uses. The only uses permitted or conditionally allowed for all Lots within the Project shall be office, retail, hotel, residential and day care uses.

8.3 **Nuisances.** No Owner shall permit any use of his premises or any building structure thereon for any purposes which shall increase the fire hazard to adjoining properties; or for any purpose which constitutes a nuisance or causes the emission of odors or gases objectionable to personnel or injurious to products stored upon adjoining premises or premises within five hundred (500) feet of said Property; or for any purposes calculated to injure the reputation of said premises, or neighboring Property or for any purpose or use in violation of local, state or federal statute or ordinance. No obnoxious or offensive trade or activity shall be carried on or upon any of the Property in the Project, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the Project. Written approval by the Declarant or the ACC of a particular use shall be conclusive evidence of compliance with this restriction insofar as this Declaration controls.

ARTICLE 9 PLANNING, DESIGN REVIEW AND CONSTRUCTION REQUIREMENTS

9.1 In addition to the terms, conditions and requirements of the Base Declaration, the Association, through its constituent Architectural Control Committee (the "ACC"), may adopt, maintain and administer design and construction standards for improvements in the Project, as well as the documents and requirements for submittal to the ACC. From time to time, and in its sole discretion, the Architectural Control Committee may amend its design and construction standards in any manner consistent with the statement of purpose set forth in Article 1 of this Declaration. It is intended that a basic harmony of architecture prevail among the various structures and improvements so that no individual improvement or structure detract from the attractiveness and continuity of the overall character and theme of the Project as determined by the Declarant.

Approval shall be based on, but not limited to adequacy of the dimensions of improvements, storm drainage considerations, conformity and harmony of exterior design of neighboring structures, improvements, operations and uses; relating topography, grade and finished ground elevation of the site being improved to that of the neighboring sites and street frontages; and location and orientation of the improvements with respect to adjacent streets and the overall design intent of the Project.

Landscape treatment shall be provided in accordance with applicable City Ordinance and such rules and standards established by the ACC to give unity and direction

throughout the diverse areas of the Property. Unity of design shall be achieved by the repetition of certain plant varieties and other landscape materials throughout the development, and by correlation with adjacent designs.

9.2 Control of Improvements.

(A) No improvement, including without limitation, utilities, buildings, signage, parking, paving, lighting, sidewalks and landscaping or change to any existing improvement of any type shall be made on any portion of any Property within the Project until the exterior plans, specifications and location for proposed improvements have been approved in writing by the Architectural Control Committee or appointed representative, hereinafter referred to as "ACC", as appointed by the Association's Board of Directors in accordance with the Association's By-Laws. Said plans and specifications shall include the use, layout, signage (both temporary and permanent), type of construction, terrain, and drainage handling systems, parking lots, drives, fencing, landscaping, siltation control, exterior lighting, and the actual external aspects and design of any building or improvement to be erected upon or be brought to the Property within the Project. The ACC reserves the right to require the submission of designs, material selections and layouts of proposed improvements or changes at different stages of the design process, and further reserves the right to specify the information required therein as well as the format thereof. Such plans and specifications shall be in such form and shall contain such information as may be required by the ACC, but, in any event, shall include (i) a site plan of the Property showing the nature, color scheme, kind, shape, height, materials and location with respect to said Property section (including proposed front, rear and side setbacks) of all structures, fences, or barriers, and location of all parking spaces and driveways on the Property, and (ii) grading, drainage, irrigation and landscaping plans for the particular Property. All areas of the Property visible from the street shall be irrigated with an automatic irrigation system. In the event that the ACC should fail to approve or disapprove such improvement within thirty (30) days after receipt of plans and specifications, then approval shall be deemed to have been waived.

(B) Before such plans, specifications and design as required in this Section shall be submitted for approval, same must be prepared by a professional architect currently approved by the ACC, and in the case of site improvements, by a professional landscape architect currently approved by the ACC and who is a graduate of a school of landscape architecture accredited with the American Society of Landscape Architecture. Additionally, said submittal shall include an architectural review fee set from time to time by the ACC to cover the costs of review and inspection. Because of the complexity of the Project's architecture and landscape standards, only architectural and landscape architectural firms approved by the ACC may be used for landscape design. A list of approved firms may be obtained by requesting the same from the ACC. All landscape plans submitted to the ACC shall be prepared by those firms so approved unless a firm is otherwise approved by the ACC.

(C) No construction on any of the Property shall be begun or continued

until and unless the general contractor is currently approved by the ACC. Due to the necessity of strict compliance with the provisions hereof as to the design and construction of improvements, all general contractors and builders must be licensed by the State of Tennessee and meet the standards of the ACC. Further, the ACC reserves the right to adopt, maintain, and administer construction standards for improvements in the Project, as amended from time to time, pertaining to all aspects of construction, and including but not being limited to: (i) construction debris and trash containment and removal, (ii) protection of infrastructure and landscaping, (iii) construction times, (iv) construction audio equipment and noise, (v) materials delivery and disposal, (vi) surveys and construction staking, (vii) dump sites, (viii) Port-a-Johns, and (ix) protection of adjacent property.

(D) If any improvement or change requiring approval shall be undertaken on the Property, and said approval has not been obtained from the ACC, or if any improvement or change which is not in conformance with approved plans and specifications shall be undertaken on the Property, said Improvement or change shall be deemed to have been undertaken in violation of these covenants; and, upon written notice of the ACC, any such improvement or change deemed to be in violation shall be removed or altered so as to extinguish such violation. If, thirty (30) days after the notice of such violation, the Owner of such Property in question shall not have taken reasonable steps toward the removal or alteration of the same, Declarant, its representative, or the ACC shall have the right, through its agent, to enter said Property and to take such steps as may be necessary and as available in law or equity to extinguish such violation and Fine the Owner, and all costs, the Fine, expenses, and attorney fees pertaining thereto shall be a binding obligation of the Owner as well as a lien on the Property in question, upon the recording of such with the Register's Office of Shelby County, Tennessee. Any lien so recorded shall be subordinate to the lien of any existing deed of trust. Any agent of the Declarant or the ACC may, at reasonable times, enter upon and inspect any Lot and Improvements thereon for the purposes of ascertaining whether the maintenance of such Lot, and the maintenance, construction or alteration of structures thereon, are in compliance with the provisions of these restrictions, and no such persons shall be deemed to have committed a trespass or other wrongful act by such entry or inspection.

For the purpose of ensuring the development of the Property as an area of high standards, and to ensure reasonable compatibility of architectural designs, Declarant and the ACC shall have the power to control all Improvements as set forth in this Article, as well as to make such exceptions to these covenants, and to waive particular violations, as either shall deem necessary, appropriate, or proper.

9.3 Submittal Procedures. A minimum of three (3) sets of the documents required by the ACC to be submitted shall be submitted for approval as a complete package and be submitted to the ACC in writing over the signature of the Owner or his authorized agent requesting approval, including but not being limited to the following:

(A) Complete architectural plans, specifications and declaration of uses.

(B) Complete landscape plans and specifications indicating plant species, locations, quantities, area sizes, and including the irrigation plans and specifications.

(C) Samples of all exterior materials including the color and texture to be used in all improvements will be submitted.

(D) Plans and specifications relating to all exterior signage to include samples of all materials used.

(E) Engineering plans and specifications relating to all improvements, including electrical, mechanical and civil.

(F) Credentials and licenses of all builders and general contractors.

In the interest of expediting the approval process, the Owner or Member is encouraged to consult with the ACC during the early stages of the planning process at appropriate periodic intervals prior to submission. It is understood by all parties that any informal, verbal exchange between the parties is non-binding and subject to change at the sole option of the ACC. Multiple submittals may be required by the ACC.

A minimum of three (3) sets of the final plans and specifications shall be submitted complete, at one time, and shall be accompanied by a signed request from the Owner and Member for final approval thereof. Such final plans and specifications should be submitted at least thirty (30) days prior to their submittal to the relevant governmental authority for a Building Permit.

The ACC shall be allowed thirty (30) days from receipt of plans and specifications to disapprove or approve the plans and specifications. If the ACC does not disapprove the plans and specifications within thirty (30) days from receipt thereof, such final plans and specifications shall be deemed to be so approved.

The ACC's intent in review is to uphold the requirements, both written and implied, of Planning and Design Review Requirements.

9.4 **Review Process.**

(A) **Standards.** The ACC shall have the right to disapprove any final construction drawings and specifications because they fail to comply with any criteria or requirement of this Declaration, the Conditions of Approval, or the ACC, as amended from time to time.

(B) **Statement of Reasons for Disapproval.** In any case where the ACC shall disapprove any construction drawings or specifications submitted hereunder or shall approve the same only as modified or upon specified conditions, notice of such disapproval or qualified approval shall be accompanied by a statement of the reasons therefor. In any

such case, the ACC, if requested, shall make reasonable efforts to assist and advise the applicant in the preparation of acceptable construction drawings and specifications.

(C) **Liability for Violation.** Any person, firm or corporation violating these Articles 9, 10, 12, 13 and/or 14 shall be liable for all costs incurred in remedying such violations, including, but not limited to, attorneys' fees and court costs and be subject to Fines as set forth in 14.7.

(D) **Copies.** Upon approval by the ACC of any final construction drawings and specifications submitted hereunder, three (3) copies of such final construction drawings and specifications, as approved, shall be deposited with the ACC by the Owner one (1) year after the next succeeding December 31.

9.5 **Appeal.** In the event the plans and specifications submitted to the ACC for approval are disapproved, the Owner or party making such submission may appeal in writing to the Board of Directors of the Association hereinafter referred to as "board". The written request must be received by the Board not more than thirty (30) days following the final decision of the ACC. The Board shall submit such request to the ACC for review, whose written recommendations will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed to have upheld the ACC's decision.

9.6 **Design Review Fee.** The ACC may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to this Article 9, payable at the time such plans and specifications are so submitted. The amount of such fee shall contain the cost of making such examination, including the cost of any professional fees incurred in connection therewith.

9.7 **Certificate of Compliance.** Upon completion or alteration of any Improvement on any Lot undertaken and completed in accordance with plans and specifications approved by the ACC, and on written request of the Owner of such Property, a Certificate of Compliance shall be issued in a form suitable for recordation. Preparation and recording of such Certificate shall be at the expense of such Owner. Any Certificate of Compliance issued in accordance with the provisions of the 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 Certificate shall be conclusive evidence that all Improvements and/or alterations described therein comply with all requirements of this Declaration.

9.8 **Designation of Committee.** The Association shall have an Architectural Control Committee ("ACC") which shall consist of not less than three (3) members. So long as the Declarant holds an ownership interest in any portion of the Project, the appointment of the members of the ACC shall be made exclusively by the Declarant. Thereafter, appointments shall be made by the Board of Directors of the Association. Members of the

ACC shall serve at the pleasure of the Declarant, and later at the pleasure of the Board. The vote of two members shall constitute the action of the ACC.

9.9 **Vacancies.** The Declarant shall have the exclusive right and power at any time and from time to time to create and fill vacancies on the ACC.

9.10 **Officers.** At the first meeting of the ACC, the ACC shall elect from among themselves a Chairman, a Vice-Chairman and a Secretary who shall perform the normal duties of their respective offices.

9.11 **Function.** No improvements shall be constructed, erected, placed, altered, maintained or permitted on any portion of the Project until plans and specifications, in such a form and detail and under such submitted procedures as the ACC may deem necessary, or desirable, as amended from time to time, shall have been submitted to and approved in writing by such ACC. The ACC shall have the power to employ professional consultants, if it deems necessary, to assist it in discharging its duties.

9.12 **No Construction or Use Prior to Approval.** No building, structure or improvement of any kind shall be commenced, installed, erected, placed, assembled, altered, moved onto, or permitted to remain on any building site, nor shall any uses be commenced on any building site, unless and until the final construction drawings and specifications for the same (including a description of the proposed use) have been submitted to, reviewed and approved by the ACC. No Owner shall apply to any public authority for any construction or building permits for any project before written approval of the final construction drawings and specifications have been given, unless the ACC has waived this requirement with written notification to such Owner.

9.13 **Governmental Approval.** Approval by the ACC shall be separate from all review and approval procedures by the Town of Collierville or any other governmental entity. Any material changes made to the final construction drawings and specifications must be resubmitted and reapproved by the ACC.

9.14 **Inapplicable to Declarant.** This Article shall not apply to the Declarant, its successors and assigns, and the Declarant need not seek or obtain ACC approval for any improvement constructed or placed, or landscaping done by the Declarant on any property in the Project owned by the Declarant, on Common Areas, or within street rights-of-way designated as a Streetscape, Pedestrian, Utility, and Street Maintenance Easement. Notwithstanding the foregoing, Declarant shall in no way be relieved from any obligations it may have with regard to planning, design and construction under the Base Declaration.

9.15 **Vehicle Parking.** Vehicle parking shall be screened to the extent possible by architectural or landscape design. Parking spaces shall not be used for permanent or temporary storage of junk vehicles, recreational vehicles, private vehicles offered for sale, house trailers or commercial or industrial vehicles or other semi-mobile equipment. Each lot must provide adequate off-street parking, and all parking areas shall be paved with

approved materials. All parking visible from streets shall be screened from view as well as possible by depressing grades, by use of landscaping or by earth berms. All parking requirements are subject to applicable ordinances of the Town of Collierville.

9.16 Loading and Trash Handling Areas. All loading docks shall be located so that trucks using the docks will not be readily visible from the public streets. All loading docks and trash containers shall be screened from view by building, dense landscaping, walls or decorative fencing as required by the ACC. Except during the process of loading or unloading, trucks shall not be parked outside of a building overnight, unless parked in suitably screened areas, as approved by the ACC.

ARTICLE 10 MAINTENANCE

10.1 Standards. In addition to the standards which may be set forth in the Base Declaration, the Association, through the ACC, may adopt, maintain and administer standards for maintenance in the Project. From time to time, and in its sole discretion, the ACC may amend its maintenance standards.

10.2 Maintenance During Construction Period. During construction of an improvement, the lot on which the improvement is being constructed and adjacent areas and streets impacted by the construction shall be kept clean on a regular basis, and all trash, rubbish, and debris removed therefrom after any construction or work is done thereon. During construction, the Owner shall be responsible for keeping the lot in reasonably neat condition, preventing the accumulation of trash, and shall prevent runoff of soil and wind transmission of trash and debris from the lot onto adjacent property or streets. Streets providing access to a lot shall be promptly and regularly cleaned by the Owner or Owner's contractor to remove dirt resulting from construction activity.

10.3 Site and Building Maintenance. Each Member at all times must keep his premises, building improvements and appurtenances in a safe, clean, wholesome condition and comply in all respects with governmental health and police requirements. Each Member will remove, at his own expense, all rubbish of any character, whatsoever which may accumulate on his respective premises. If a Member allows rubbish to accumulate and his premises become unsightly as determined by Declarant or the Association, then in that event Declarant and/or the Association reserves the right to have such unsightly material removed at the expense of such Member, and if not removed within fifteen (15) days of the date written notice is sent to such Lessee or Owner, the Association may impose Fines and the costs of such removal and such Fines shall become a binding personal obligation of such Lessee and/or Owner and shall become a lien against the Lot in question.

10.4 Landscape and Grounds Maintenance. The grounds of a Lot, which shall include without limitation, all approved landscaping, approved gardens, lawns, trees and other plants or landscaping items of any type or kind whatsoever shall be maintained in a

neat and adequate manner. Maintenance activities shall include, without limitation, mowing of lawns, trimming of hedges, prevention of overgrowth, preservation of appearance in accordance with the standards of the Project, adequate irrigation, replacement of dead, diseased, or unsightly landscaping or other plant material, removal of weeds from planted areas, and appropriate pruning of all landscaping, gardens and plants. In the event an Owner shall fail to maintain all grounds located on its Lot in a manner reasonably satisfactory to the Association, and/or in keeping with other property, the Association shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the grounds and to fine the Owner and/or user of that Lot. The cost of such repair, maintenance and restoration and any Fines imposed shall be added to and become part of the Assessment of that Lot.

10.5 Parking Lot and Sidewalks. All parking lots, pedestrian walkways and other hard surface areas shall be swept and cleaned regularly, and cracked and damaged areas shall promptly be repaired or replaced as required. All asphalt paved surfaces shall be resurfaced or sealed by the Owner at its cost and expense every three to five years, as determined by the ACC. The Owner shall at all times keep paved areas in good condition, repairing any fractures, cracks, potholes, fissures, etc. Said resurfacing or sealing shall be done within ninety (90) days after notification and in accordance with specifications provided by the ACC. Broken bumper stops and/or curbing shall be replaced as required and drainage inlets, storm sewers and any surface drainage facilities shall be maintained in good repair and shall remain clear of debris so as to enable the proper flow of water.

10.6 Additional Maintenance and Operation Activity Criteria. In addition to the foregoing maintenance and operation activity criteria, the ACC may promulgate and adopt additional maintenance and operation activity criteria that are consistent with and will further implement the statement of purpose set forth in this Declaration.

10.7 Failure to Maintain Property. In the event an Owner of any Property shall fail to maintain his or her property and the Improvements thereon in a manner reasonably satisfactory to the Association, and/or in keeping with other property, including but not being limited to parking lots and striping, the Association shall have the right, through its agents and employees, to enter upon said property and to repair, maintain, and restore the property and the exterior of the Improvements erected thereon and to fine the Owner and/or user of that property. The cost of such repair, maintenance and restoration and any Fines imposed shall be added to and become part of the Assessment of that property. Additionally, each Owner shall be responsible for the maintenance and repair of the curb adjoining the private right-of-way which is contiguous to the Owner's property. The cost of said maintenance, expenses and attorneys fees shall be a binding obligation of the Owner as well as a lien on the property in question, upon recording of such notice with the Register's Office of Shelby County, Tennessee. Any lien so recorded shall at all times be subordinate to any prior recorded deed of trust. In addition to the costs as set forth herein, the Owner shall be responsible for all court costs, reasonable attorneys fees, and interest from the date of any expenditure at the maximum legal rate of interest.

10.8. Uniform Parking Lot and Other Hard Surface Maintenance. The Declarant hereby establishes that the Declarant and/or the Association shall, have the right, but not the obligation, to provide uniform maintenance of all drive aisles, parking lots, pedestrian walkways and other hard surface areas located within the Lots. As such, the Declarant hereby reserves for itself and grants to the Association an ingress and egress easement for itself and for any management company which may be selected by the Declarant and/or the Association, over all Lots for the purpose of performing such uniform maintenance, if any. If the Declarant and/or the Association exercises its right to provide uniform maintenance as set forth hereinabove, all costs and expenses incurred in performing said maintenance shall be included as part of the Annual Assessment and shall be paid by the Owners in accordance with Article 7 of the Declaration.

ARTICLE 11 RIGHTS OF MORTGAGEES

A mortgagee, upon request, will be given written notification from the Association of any default in the performance by the Owner of a lot relating to the mortgage owned by the mortgagee of any obligation under the Declaration or related Association documents, which is not cured within sixty (60) days. The mortgagee will be given thirty (30) days to cure such default should it so elect. A mortgagee shall also have the right to examine the books and records of the Association during normal business hours.

ARTICLE 12 GENERAL COVENANTS AND RESTRICTIONS FOR BUILDING IMPROVEMENTS

12.1 Upon completion of any improvement or alteration on any Property undertaken and completed in accordance with plans and specifications approved by the ACC, and upon written request of the Owner or Member owning or leasing such Property, a certificate of compliance shall be issued in a form suitable for recordation. Preparation and recording of such certificate shall be at the expense of such person requesting such certificate of compliance. Any certificate of compliance issued in accordance with the provisions of this paragraph shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all improvements and changes described therein comply with all requirements of the Association of this Declaration which pertain to landscaping, signage and building and site plans and specifications.

12.2 Any improvement or change undertaken on any Property shall be in accordance with any and all provisions contained herein.

12.3 The applicable building codes in effect at the time of any construction shall apply to all construction.

12.4 The Declarant reserves unto itself the right to impose additional and separate

restrictions at the time of sale of any of the Property sold by the Declarant in the Project, which said restrictions may not be uniform, but may differ as to different portions of the Property by reason of either the restricted use established by the zoning laws or any relevant governmental body or the right of Declarant or its assigns to impose additional and separate restrictions.

12.5 Neither Declarant nor its assigns nor the ACC nor any architect or agent thereof, shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

12.6 The Declarant or its assigns, the Association or any Member owning or leasing any of the Property, or improvements thereon, contained within the Project 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 of the Property in the Project. Failure to enforce any of such proceedings shall in no event be deemed a waiver of the right to do so thereafter.

12.7 If any Lot, or portion thereof within the Project is subdivided, the subdivision thereof shall in all events be subject to all these same Covenants, Conditions and Restrictions.

12.8 The Declarant or its assigns, the Association and any Member of the Association have the right to enforce this Declaration as noted on the plat of subdivision of the real estate described on Exhibit A attached hereto known as Morrison Village Planned Development, to be recorded in the Register's Office of Shelby County, Tennessee. Failure to enforce any of such proceedings shall in no event be deemed a waiver of the right to so do thereafter.

12.9 Written approval or waiver by Declarant, its assigns, or the ACC shall be deemed conclusive evidence of compliance with any restriction, covenant, term and/or condition requiring such written approval.

ARTICLE 13 COVENANTS AND RESTRICTIONS FOR USE

13.1 **Use.** No Property shall be used except for office use or such other uses approved by Declarant or its assigns.

13.2 **Rights of Declarant to Facilities.** Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant to maintain, during the period of the sale of said Property, upon such portion of the premises as Declarant deems necessary, such facilities, as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the sale of said Property, including, but without limitation, a business office, storage area, construction yard, signs, and sales office.

ARTICLE 14
GENERAL PROVISIONS

14.1 **Duration.** This Declaration and the covenants, restrictions, changes, and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and every Owner of any part of the Project, including the Declarant and its legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said Declaration shall automatically be extended for successive periods of ten (10) years.

14.2 **Termination and Modification.**

(A) The Declarant shall have the sole right and power at all times to terminate or modify this Declaration with respect to any portion of the Property which the Declarant owns.

(B) This Declaration, or any provision hereof, or any covenant, condition, restriction and reservation contained herein, may be terminated, extended, modified or amended, as to the whole of the Project or any portion thereof, with the written consent of two-thirds (2/3) of the total eligible votes of the membership of the Association voting together. Members may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose for such meeting; provided, however, that so long as the Declarant owns at least twenty percent (20%) of the property subject to this Declaration, no such termination, extension, modification or amendment shall be effective without the written approval of the Declarant. Any such termination, extension, modification or amendment shall become effective when a proper instrument in writing has been executed, acknowledged and recorded in the Register's Office of Shelby County, Tennessee.

14.3 **Waiver or Invalidation.** Any waiver or failure to enforce any provision of this Declaration in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or similar situation at any other location in the Project. Invalidation by Court adjudication of any provision of this Declaration shall not affect the validity of any other provision, and all other provisions thereof shall remain in full force and effect.

14.4 **Notices.** Any notice required or permitted herein shall be in writing and mailed, postage prepaid, by registered or certified mail, return receipt requested and shall be directed as follows:

(A) if intended for a building site owner, to the address of the building site, if improved;

- (B) if the building lot is not improved, to the address set forth in the purchase contract;
- (C) if none of the foregoing, to the last known address of the Owner; and,
- (D) if intended for the Declarant, to the address as set forth herein.
- (E) if intended for a Representative Member, to the address on file with the Association.

14.5 Constructive Notice and Acceptance. Every person who now, or hereinafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained in the instrument by which such person acquired an interest in such Property.

14.6 Enforcement. Violation or breach of any covenant, condition or restriction herein contained shall give the Declarant and/or the Association and/or Owners and/or the Declarant, in addition to all other remedies, the right to proceed at law or in equity to compel compliance with the terms of this Declaration, and to prevent the violation or breach of any of them, and all of the expenses of such litigation shall be borne by the then Owner or Owners of the subject property, provided such proceeding results in a finding that such Owner was in violation of this Declaration. Expenses of litigation shall include reasonable attorney's fees.

14.7 Fine. The Architectural Control Committee and/or Board of Directors of the Association shall have the right to impose a fine not to exceed One Thousand Dollars (\$1000.00) as adjusted annually by Consumer Price Index (or any substitute index) for any one violation of the covenants contained herein. Such a fine shall be in addition to the remedies set forth previously, and shall not restrain the aforementioned entities from taking any or all of the remedies and actions outlined in this Declaration. A violation which continues after the provision of written notice shall be treated as a continuous violation and shall result in a fine of an additional Five Hundred Dollars (\$500.00), per day until the violation ceases. Fines shall be attributable to each Property and shall be a personal obligation of the Owner and shall be secured by a lien on such Property at the time they become payable, pursuant to notice given by the Board of Directors by billing or otherwise (whether or not such notice is received by the Owner), and such lien shall also cover interest and any necessary collection expenses, including attorneys fees, provided, however, that such lien shall be subordinate to real estate taxes and any deed of trust or mortgage to secure a bona fide indebtedness recorded prior to the giving of such notice, or within ten (10) days after receipt of a written acknowledgement from the Association that no charges are outstanding against such Property.

The amounts of such fines as set forth above are as of 2008, and shall be

adjusted annually thereafter by the increase in the Consumer Price Index.

14.8 Acceleration of Installments. Upon default in the payment of any one or more installments of any Assessment levied pursuant to this Declaration, 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, fifteen (15) days after written notice of such default is given to the Member.

14.9 Exempt Property. All Properties dedicated to and accepted by a local public authority and the Common Area shall be exempt from the Assessments created herein except as otherwise specifically provided.

14.10 Liability of Declarant. The Declarant and all members of the ACC and/or the Association Board of Directors are hereby expressly relieved of any liability to any Owner, and to any other party to the extent permitted by law, for any act of omission or commission in connection with performance of their functions as Declarant or such member, except for willful misconduct or act of bad faith.

14.11 Severability of Covenants, Conditions and Restrictions. Invalidation of any one or more of the covenants, conditions and restrictions or other provisions herein or hereafter set forth by any Judgment or Court Order shall in no way affect any of the other covenants, conditions and restrictions which shall remain in full force and effect.

14.12 Condemnation, Destruction or Termination of the Common Area. In the event of loss or damage to the Common Area as a result of condemnation, in whole or in part, or partial or total destruction, the Board of Directors of the Association shall represent the Association in any proceedings, negotiations, settlements or agreements. In representing the Owners, the Board of Directors of the Association shall serve as the attorney-in-fact for the Owners. Any proceeds from any settlement shall be payable to the Association for the benefit of the Owners.

14.13 Contract for Property Management. Declarant may retain the services of a professional management company to manage and maintain the Common Areas of the Property. Any such contract shall include a right of termination without cause which may be exercised by the Association at any time after the transfer of control from Declarant. There shall be no penalty for the right of termination by the Association and advance notice of termination shall be required of no more than ninety (90) days.

14.14 Rights of Mortgage Holders, Insurers or Guarantors. The holder, insurer or guarantor of a mortgage on any lot in the Property shall have the right to timely written notice from the Association of the following:

(A) Any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing its mortgage;

(B) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Property on which it holds the mortgage;

(C) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

(D) Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

To be entitled to receive this information, the mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the address of the Property on which it has or insures or guarantees the mortgage.

14.15 Rerecording of Plat. By the acceptance of a Warranty Deed conveying title to Property, the Owner thereof shall be deemed to consent to amendments or modifications of the Final Plan of the Planned Development for purpose of technical corrections, boundary line adjustments, etc. So long as any amendment or modification does not materially reduce the usability of any Owner's parcel, the Declarant may execute any amendment or modification of the Final Plan as an Owner's attorney in fact.

14.16 Insurance. The Association shall obtain and maintain at all times, to the extent obtainable, policies of insurance, written with financial responsible and able companies, licensed to do business in Tennessee, covering the risks of:

(A) Bodily injury and property damage liability insurance in such limits as the Board of Directors may from time to time determine; and

(B) Worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, and subcontractors of the Association in the amounts and in the forms now or hereafter required by law; and

(C) Fidelity coverage against dishonesty of employees or any other persons handling funds of the Association, destruction or disappearance of money or securities and forgery and endorsements thereto covering any persons who serve the Association without compensation; and

(D) Insurance against such other risks of a similar or dissimilar nature as the Board of Directors shall deem appropriate with respect to the Property, including insurance on any personal property of the Association located thereon, and Directors and Officers liability insurance with respect to the actions of the Board of Directors and officers of the Association. The types of coverage and limits of all insurance carried pursuant to these provisions or failure to carry adequate coverage shall not be subject to question or claim against the Association or its Board of Directors. Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing

insurance obtained by the Board of Directors shall not be affected or diminished by reason of such additional insurance carried by any Owner.

14.17 **Construction by Declarant.** Notwithstanding any provisions herein to the contrary, it shall be expressly permissible for the Declarant to maintain, during the sale of said Property, upon such portion of the Property as the Declarant deems necessary, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the sale of said Property, including without limitation, storage areas, construction yard, signs, and sales office.

14.18 **Discrimination.** No action shall at any time be taken by Declarant or the Association or its Board of Directors which in any manner would unlawfully discriminate against any Member in favor of the other Members.

14.19 **Rules.** There shall be no violation of any rules which may from time to time be adopted by the association and/or promulgated among the Members of the Association. Such rules must be in writing. The Association is hereby authorized to adopt such rules and to enforce same by any enforcement provision hereof or as otherwise permitted by law.

14.20 **Inspection.** Declarant may from time to time at any reasonable hour or hours, enter and inspect any of the affected property to ascertain compliance with this Declaration.

14.21 **Captions.** The captions, section numbers and article numbers appearing in this Declaration are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles nor in any way modify or affect this Declaration.

14.22 **Effective Date.** This Declaration shall become effective upon its recordation in the Register's Office of Shelby County, Tennessee.

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IN WITNESS WHEREOF, the Declarant has caused these presents to be executed as required by law on this, the day and year first written above.

W.T. Price L.P., a Tennessee limited partnership

By: Boyle - REB, LLC, a Tennessee limited liability company, general partner

By: _____

Title: _____

Morrison Village Association, Inc.

By: _____

Title: _____

State of Tennessee
County of Shelby

Personally appeared before me, a Notary Public, _____, with whom I am personally acquainted and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the _____ of Boyle - REB, LLC, a Tennessee limited liability company, which is the general partner of the Maker, W.T. Price, L.P., a Tennessee limited partnership, and is authorized by Boyle - REB, LLC, a Tennessee limited liability company, which is authorized by the Maker to execute this instrument on behalf of the Maker.

WITNESS my hand and seal at office on this _____ day of _____, 2008.

Notary Public

My Commission expires:

State of Tennessee

County of Shelby

Before me, a Notary Public of the state and county mentioned, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the _____ of Morrison Village Association, Inc., a Tennessee nonprofit corporation, the within named bargainor, and that he/she as such _____, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as _____.

WITNESS my hand, at office, this ____ day of _____, 2008.

Notary Public

My Commission expires:

EXHIBIT "A"

Description of a part of the W. T. Price, L.P. property as per Instrument No. EV 9615 in the Shelby County Register's Office; said property also part Area 1, of the Price Farms P.D., as recorded in plat book 229, page 9 in the S.C.R.O., and being more particularly described by metes and bounds as follows:

Commencing at a point in the east right-of-way of Houston Levee Road (108' R.O.W.), said point being the southwest corner of the Town of Collierville, Fire Station No. 5 property as recorded in Plat Book 192, Page 54 in the S.C.R.O., thence southwardly, with the east right-of-way of said Houston Levee Road, along a curve to the right having a radius of 3,294.28 feet and an arc length of 146.50 feet (chord South 23° 36' 08" East – 146.49 feet) to the true POINT OF BEGINNING; thence along a curve to the right having a radius of 30.17 feet and an arc length of 32.77 feet (chord = North 35° 43' 04" East, 31.18 feet) to a point; thence North 23° 10' 10" West a distance of 3.30 feet to a point in the south line of proposed South Shea Road (74.00' R.O.W.); thence continuing along the said south line the following calls: North 66° 49' 50" East a distance of 19.34 feet to point of curvature; along a curve to the right having a radius of 688.00 feet and an arc length of 289.16 feet (chord = North 78° 52' 15" East, 287.04 feet) to a point of tangency; South 89° 05' 06" East a distance of 533.43 feet to a point of curvature; along a curve to the left having a radius of 862.00 feet and an arc length of 42.11 feet (chord = North 89° 30' 56" East, 42.11 feet) to a point of tangency; North 88° 06' 58" East a distance of 228.46 feet to a point; thence departing said south line South 01° 53' 16" East a distance of 135.16 feet to a point; thence South 43° 46' 22" East a distance of 102.86 feet to a point; thence South 02° 39' 20" East a distance of 104.28 feet to a point; thence South 36° 05' 39" East a distance of 121.49 feet to a point; thence South 69° 46' 48" West a distance of 271.73 feet to a point; thence South 81° 23' 45" West a distance of 252.53 feet to a point; thence South 45° 59' 52" West a distance of 170.88 feet to a point; thence South 86° 39' 46" West a distance of 161.36 feet to a point; thence South 75° 09' 30" West a distance of 91.64 feet to a point; thence North 86° 56' 45" West a distance of 66.74 feet to a point; thence North 38° 43' 18" West a distance of 75.02 feet to a point; thence South 66° 37' 48" West a distance of 105.13 feet to a point in the east line of said Houston Levee Road; thence continuing along said east line and along a curve to the left having a radius of 3334.04 feet and an arc length of 160.06 feet (chord = North 13° 07' 42" West, 160.05 feet) to a point; thence continuing along said east line South 75° 34' 26" West a distance of 5.86 feet to a point; thence continuing along said east line and along a curve to the left having a radius of 3294.28 feet and an arc length of 452.94 feet (chord = North 18° 23' 22" West, 452.58 feet) to the POINT OF BEGINNING and containing 646,184 square feet (14.834 acres).
