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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR RAINTREE P.D.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
RAINTREE P.D.

THIS DECLARATION is made, published and declared this 2ND day of SEPT.,  
1997, by and among (1) Raintree Development Co., LLC (the "Declarant"), a Tennessee  
corporation, and (2) any and all persons, companies or other entities hereinafter acquiring any of  
the hereinafter described real property.

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

WHEREAS, the Declarant has caused to be prepared a plan for the subdivision of said  
real property into residential lots, said subdivision to be known as Raintree P.D.;

WHEREAS, the Declarant has caused a plat of the said real property to be filed in Plat  
**Book 165 Page 45**, in the Register's Office of Shelby County, Tennessee; and

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

NOW, THEREFORE, in consideration of the premises, the Declarant does hereby publish  
and declare (1) that all, and each and every part of, said real property is held and shall be held,  
conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and otherwise  
held and used subject to (a) the following covenants, conditions, restrictions, uses, limitations  
and obligations and (b) all easements, conditions, restrictions, etc., as set out in the Plat (as  
hereinafter defined), all of which are hereby declared and agreed to be in furtherance of a plan for  
the development and improvement of said real property, and (2) that said covenants, conditions,  
restrictions, uses, limitations and obligations shall run with the land and shall be binding upon  
and a burden and a benefit to the Declarant, its successors and assigns, the Association and any  
person or legal entity acquiring or owning any interest in any portion of said real property or any  
improvements thereon, and their grantees, successors, heirs, executors, administrators, devisees  
and assigns.

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## ARTICLE I.

DEFINITIONS

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

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

Section 2. "Common Area" shall mean and refer to all real property (including the improvements thereon) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot shall be those areas designated on the Plat.

Section 3. "Declarant" shall mean Raintree Development Co., LLC, a Tennessee company, with offices in Shelby County, Tennessee, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

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

Section 5. "Improvements" shall mean the structures, walls, pavement, plantings and other additions built or placed on the Lots.

Section 6. "Lot" or "Lots" shall mean and refer to the plots of land designated on the Plat, with the exception of the Common Area. For all purposes hereunder, the Declarant shall be the Owner of all of said Lots, save and except only those particular Lots which the Declarant conveys in fee simple title by recordable deed from and after the date hereof.

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

Section 8. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance

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of an obligation. The purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

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

Section 10. "Property" shall mean that certain real property hereinabove described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 11. "Plat" shall mean the original recorded plat and any amendments or revisions thereto.

ARTICLE II.

THE PROPERTY

Section 1. Property Subject to Declaration. The Property shall be held and used subject to this Declaration.

Section 2. Roads and Utilities. The roads within the Property are public property. The sewers, pipes, lines, cables, other means of utility service, etc. shall also be public.

ARTICLE III.

THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

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

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

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to one hundred (100) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

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- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, but no sooner than 2002.
- (b) when Class B membership decides to cease
- (c) Phase Two will not be assessed until building permits can be obtained.

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

Section 4. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. Subject to this Declaration, the vote of the Members representing fifty-one (51%) percent majority of the total votes cast with respect to any question, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of statute, the Association's Charter or By-Laws, or this Declaration, a different vote is required. Such express provision shall govern and control. The vote of any membership which is owned by more than one person may be exercised by any of them present at any meeting unless an objection or protest by a co-owner of such membership is noted at such meeting. In the event all of the co-owners of any such membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question then such vote shall not be counted for purposes of deciding that question. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

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

Section 6. Quorum. The presence, either in person or by proxy, of Members representing at least twenty-five (25%) percent of the total votes entitled to be cast with respect to any question shall be requisite for, and shall constitute a quorum for, the transaction of business at all

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meetings of the Members. If the numbers of Members at a meeting drops below the quorum and the question of a lack of quorum, is raised, no business may thereafter be transacted.

#### ARTICLE IV.

##### PROPERTY RIGHTS AND EASEMENTS

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

- (a) The right of the Association, as provided in its Charter and/or By-Laws, to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (b) The right of the Association, in accordance with its Charter and/or By-Laws, to improve and maintain the Common Area;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of Members has been recorded;
- (d) The right of the Declarant and the Association to protect, maintain, and inspect the Common Area, the Landscape Screen and the Frontal Fence.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Easements for Utilities and Related Purposes. The Declarant and/or the Association are authorized and empowered to grant such licenses, easements and/or rights-of-way for water lines, electrical cables, telephone cables, television and other communication cables, internal and external wiring and antenna, gas lines, stormdrains,

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underground conduits and/or such other purposes related to the provision of public utilities and other common services to the Property as may be considered necessary, appropriate or desirable for the orderly maintenance, preservation of the health, safety, convenience and/or welfare of the Owners and the Declarant.

Section 4. General Easement. The Declarant hereby reserves for itself and the Association the right and easement to the use of any Lot or any portion thereof, as may be needed for repair, maintenance, or construction on such Lot, any other Lot, or the Common Area, the Landscape Screen or the Frontal Fence, as hereinafter defined.

Section 5. Landscape Easements. All Lots containing any part of the Landscape Screen or the Frontal Fence, as hereinafter defined, shall be subject to an easement as shown on the Plat for the benefit of the Declarant and the Association as necessary to allow for installation, maintenance and/or replacement.

#### ARTICLE V.

##### MAINTENANCE AND REPAIR

Section 1. Association Responsibilities. Except as otherwise stated in this Declaration, the Association shall provide and pay for all maintenance and expenses for the Common Area, any improvements on the Common Area, the Landscape Screen, and the Frontal Fence.

Section 2. Individual Lot Owners. Each Owner shall be responsible for the maintenance, painting, and proper upkeep of his Lot and all improvements thereon, including, without limitation, all areas within easements. Grass, weeds, and vegetation shall be kept mowed and all debris and animal waste shall be cleared at regular intervals from each Lot so as to maintain same in a neat and attractive manner.

Further each Owner shall keep his residence in a condition comparable to its condition when initially constructed. In the event all or any portion of a residence is damaged or destroyed by fire or other casualty, then the Owner shall rebuild, repair or reconstruct said residence in a manner which will substantially restore same to its original condition, or demolish the residence, at his discretion. Said rebuilding, repairing, reconstructing or demolish shall be completed within nine (9) months of the occurrence of the casualty.

In the event the Owner of any Lot shall fail to comply with the terms and conditions of this Article in a manner reasonably satisfactory to the Board of Directors and in keeping with



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other Lots, the Declarant, in its sole discretion, or the Association, after approval of two-thirds (2/3rds) vote of the Board of Directors, shall have the right, through agents and/or employees, to enter upon said Lot and to repair, Maintain and restore the Lot and to repair, maintain, restore or demolish the improvements thereon. The costs thereof, together with interest thereon and costs of collection thereof, shall be a binding personal obligation of such Owner as well as a continuing lien upon the subject Lot upon the recording of a notice of lien with the Office of the Register of Shelby County, Tennessee. The rights and remedies given to the Association by the Article of this Declaration dealing with assessments and non-payment thereof shall apply fully to the debt obligations, including interest and costs of collection, and the lien rights created in this Section. Likewise, the terms and conditions of said Article dealing with subordination and mortgage protection shall be fully applicable.

#### ARTICLE VI.

##### LANDSCAPE SCREEN AND COMMON FENCE

Common Fences. The Declarant shall construct a landscape screen (the "Landscape Screen") and a fence (the "Frontal Fence") along Shelton Road and along the main entrance.

The Landscape Screen and the Frontal Fence shall be maintained by the Association and may not be changed in any manner by any Owner.

#### ARTICLE VII.

##### ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association the assessments provided in this Article. Said assessments shall be fixed, established and collected from time to time as herein provided. All such assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof, shall also be the personal obligation of the Owner of such

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Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance of the Common Area, the Landscape Screen and the Frontal Fence.

Section 3. Annual Assessments.

(a) Each Member shall pay to the Association an annual sum equal to the Member's proportionate share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:

- (1) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any, and repayment of any indebtedness incurred by the Association and interest thereon; and
- (2) 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
- (3) The cost of extended liability insurance and the cost of such other insurance as the Association may effect; and
- (4) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements; and
- (5) The estimated cost of repairs, maintenance and replacements of the Common Area, the Landscape Screen, the Frontal Fence, and other pertinent items.

(b) For the calendar year 1997, the annual assessment shall be one hundred eighty-five dollars (\$185.00) per Lot. Assessments will not start until building permits can be obtained.

- (1) Thereafter, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership. However, the maximum

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annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(2) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(c) For each Lot, the annual assessments shall first become due after building permits become obtainable.

(d) After 1998, the Board of Directors shall determine the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require as provided in the By-Laws. The general annual assessment for each Lot shall be computed by dividing the total assessment attributable to the Property by the total number of Lots. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

Section 4. Special Assessments. In addition to the regular assessments authorized by this Article, the Association may levy a special assessment or assessments in any assessment year, 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 capital improvement associated with the Common Area, the Landscape Screen, or the Frontal Fence, including fixtures and personal property related thereto, provided that such assessment shall have the approval of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies

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entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on a yearly basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots when building permits can be obtained. The annual assessments shall be due on January 1 of each year and shall become delinquent on January 31 of each year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot in binding upon the Association as of the date of its issuance.

Section 8. Non-Payment of Assessments; Remedies of the Association. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within thirty (30) days after the date when due, shall be delinquent and shall, together with interest thereon from the due date and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. In order to evidence said lien, a notice of lien setting forth the amount of the indebtedness, the Owner's name, and a description of the Lot shall be recorded with the Office of the Register of Shelby County, Tennessee. The personal obligation of the Member to pay such assessment shall, however, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to the By-Laws, or any installment thereof, may be maintained without foreclosing or waiving the lien herein.

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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 of Directors, 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 of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the said Board may fix. The Association may bring an action at law against the Member personally obligated to pay the same, or foreclose the lien against the Lot or Lots subject to prior mortgages or deeds of trust upon the Lot or Lots; in either event, the Association may collect from the Member interest, costs and reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Owner irrevocably grants the Board of Directors of the Association the power to sell his Lot at public outcry to the highest and best bidder for cash. The Association is hereby authorized to take any and all courses of action available to it 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 said property for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of Shelby, State of Tennessee, giving notice of the time and place of such sale. Any sale of a Lot to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption, statutory right of redemption, marital rights, homestead, 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 Lot except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust described in Section 10 of this Article. The proceeds of any such sale, whether under the power of the 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 commission; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust as described above; and third, to the payment of all amounts due the Association under the terms of the Declaration and the By-Laws; and the balance, if any, to the Owner whose Lot is sold, and his assigns. Upon any default in the payment of any assessment, the Board of Directors shall have the right to all rents,

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issues, and profits from the Lot, in default and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession in the same manner as the mortgagee entering into possession following default.

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

Section 9. 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.

Section 10. Priority of Lien. The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

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

Section 11. Subordination and Deed of Trust/Mortgage Protection. The lien of the assessments provided for herein shall be subordinate to the lien of any first lien deed of trust or mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Failure to pay any assessment provided for herein shall not constitute a default under any such deed of trust or mortgage. Further, the holder of any such deed of trust or mortgage (or the indebtedness secured thereby) shall not be required to collect said assessments.

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No amendment to this Section shall affect the rights of the holder of any such deed of trust or mortgage (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.

## ARTICLE VIII.

### ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. An Architectural Committee (the "Committee") is hereby established and shall initially consist of the Declarant. Declarant shall serve as the Committee until the Class B membership terminates, at which time the Board of Directors of the Association shall have the authority to make said appointments; provided, however, that the Declarant shall have the absolute right to be one of the three Committee members until the development is complete and all of the Lots have been sold by the Declarant. The affirmative vote of a majority of the membership of the Committee shall be required to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein.

Section 2. Approvals Necessary, Rules of Committee and Remedies for Violation. With the exception of improvements desired by the Declarant, no structure or improvement of any kind or nature, or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the Lots nor shall any existing structure, improvement, fence or barrier upon any Lot be altered in any way which materially changes the exterior appearance thereof, without the written consent of the Committee; nor shall any new use be commenced on any Lot without the written consent of the Committee. Plans and specifications of all such improvements and uses shall be submitted to and retained by the Committee. They shall be in such form and shall contain such information as may be required by the Committee, but in any event shall include, without limitation, (1) a building plan and site plan showing the floor plans, exterior elevations, color scheme, kind, shape, height, materials, and location with respect to said Lot (including proposed front, rear and side setbacks) of all structures, fences or barriers, and location of all parking spaces and driveways on the Lot and the proposed surface thereof, and (2)

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grading and landscape plans. Declarant recommends (1) that each owner procure a soil test report prepared by a soils engineering firm approving the intended use of the Lot and (2) that all plans and specifications be prepared by a registered and licensed professional Architect or Engineer.

The Builder selected to construct any residence shall be approved by the Committee in its sole and absolute discretion.

The Committee may promulgate rules governing the forms and content of plans to be submitted for approval or requiring specific improvements on the Lots, including, without limitation, the exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details or other matters which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Committee at any time, and no inclusion in, or omission from or amendment of any such rule or statement shall be deemed to bind the Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Committee's discretion as to any such matter; however, no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver by the Committee in its discretion to disapprove such plans, specifications, features or elements as are subsequently submitted for use on any other Lot. Approval of any such plans and specifications relating to any Lot shall be final as to that Lot, and such approval may not be revoked or rescinded thereafter provided that the plans and specifications as approved and any condition attached to any such approval have been adhered to and complied with in regard to all structures, improvements, fences, or barriers on and uses of the Lot in question.

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

If any structure, improvement, fence, or barrier shall be altered, erected, placed or maintained upon any Lot or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the Committee as required herein, such alteration, erection, maintenance, or use shall be deemed to have been undertaken in violation of the restrictions herein and without the approval required herein; and upon written notice from the



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committee, any such structure, improvement, fence or barrier so altered, erected, placed or maintained upon any Lot, in violation hereof, shall be removed or altered, and such use shall be terminated so as to extinguish such violation.

If fifteen (15) days after the notice of such violation the Owner of the Lot in question shall not have taken reasonable steps toward the removal, alteration or termination of the same, the Association, by its officers or directors, shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the costs thereof shall be a binding personal obligation of such Owner as well as continuing lien upon the Lot in question upon the recording of a notice of lien with the Office of the Register of Shelby County, Tennessee. The provisions of the Article of this Declaration dealing with assessments and non-payment thereof, including, without limitation, the right and remedies given to the Association therein, shall apply fully to the debt obligations, including interest and costs of collection, and the lien rights created in this section. Likewise, the terms and conditions of said Article dealing with subordination and mortgage protection shall be fully applicable.

Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by the Committee, the Committee shall, upon written request of the Owner thereof, issue a letter of compliance identifying such structure and the Lot on which such structure is placed and stating that the plans and specifications, location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation of such letter shall be at the expense of the Owner of such Lot. Any compliance letter 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 compliance letter shall be conclusive evidence that all structures and improvements described therein and the use or uses described therein comply with all the requirements of these restrictions.

Any agent of the Declarant or the Committee may, at reasonable times, enter upon and inspect any Lot and any improvements thereon for the purposes of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration to structures and improvements thereon are in compliance with the provisions of this Declaration, and no such

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persons shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

## ARTICLE IX.

### CONSTRUCTION OF RESIDENCES

Section 1. Completion of Construction. Once construction of a residence is commenced, the particular Owner shall proceed diligently therewith and complete construction within eighteen (18) months after said commencement.

If said construction is not completed within said twelve (12) months, then the Owner shall owe to the Declarant a penalty equal to twenty per cent (20%) of the original price of the Lot. Said amount shall be payable within thirty (30) days after the end of said eighteenth month and shall increase by an additional penalty of one per cent (1%) of said price for each additional thirty (30) days it remains unpaid. Said penalties, together with costs of collection thereof, shall be a binding personal obligation of such Owner as well as a continuing lien upon the subject Lot upon the recording of a notice of lien with the Office of the Register of Shelby County, Tennessee. The rights and remedies given to the Association by the Articles of this Declaration dealing with assessments and non-payment thereof shall apply fully to the debt obligations, including costs of collection, and the lien rights created in this Section for the benefit of the Declarant.

The terms and conditions of this Section, including, without limitation, the time periods set forth for completion of construction, shall apply fully to any subsequent purchasers of any Lot.

Section 2. Subordination and Mortgage Protection. The subordination and mortgage protection provisions of the Article of this Declaration dealing with assessments and non-payment thereof shall be fully applicable to all the rights and remedies of the Declarant created by this Article.

## ARTICLE X.

RESTRICTIVE COVENANTS

Section 1. Residential Use. No Lot shall be used except for private residential purposes.

Section 2. Uses, Prohibited Uses and Nuisances. In order to provide for a congenial occupation of the residences to be built on the Lots and for the protection of the values of the entire development, the Lots and the residences to be constructed shall be governed by the following provisions:

- (a) The Property is hereby restricted to private residential dwellings for residential use, and no trade or business of any kind shall be conducted on the Property. All buildings or structures erected upon the Property shall be of new construction, and no buildings or structures shall be moved from other locations onto the Property.
- (b) Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof and all easements, restrictions and covenants set out in the Plat.
- (c) No structures of a temporary character, trailers, tents, shacks, garages, barns or other out-buildings shall be used on any portion of said Property at any time as a residence, either temporarily or permanently.
- (d) Each residence must have an attached fully enclosed garage for two (2) cars. No garagedoor may be left open to a street for an extended period of time. All corner lots and the following lake view lots: 66, 67, 68, 69, 71, 72, 73, 74, 75, 77, 78, 79, 80, 83, 84, & 85 are to be end loaded or rear loaded so that garagedoors do not face the lake.
- (e) Each Residence must have a uniform Verde green wrought iron mailbox structure and uniform treatment of driveway entrances to provide proper drainage, both of which shall be designated by the Committee. All flatwork including, but not limited to driveways, walkways, patios, porches, Air Conditioner Pads, etc. shall be exposed aggregate. Landscaping scheme shall be approved by the Committee.
- (f) All private fences must be constructed of brick, wrought iron, or wood. No chain link or other wire fences shall be allowed. All fences must be approved by the Committee. No fence, hedge or other separating device shall be constructed beyond the front house line, nor on corner lots beyond the side house line. All fences, regardless of location,

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shall be no less than three (3) feet tall and no more than eight (8) feet tall.

- (g) No obnoxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance.
- (h) No reptiles, horses, livestock, swine or poultry of any kind shall be raised, bred, or kept on any of the Lots. Dogs, cats or other household pets (exclusive of any reptiles or animals mentioned in the immediately preceding sentence) may be kept on the Lots provided that they are not kept, bred, or maintained for any commercial purpose. All household pets shall be confined within homes or fenced areas or restrained by leash at all times.
- (i) Within thirty (30) days after the substantial completion of a new residence, the initial Owner shall plant at least three trees with a minimum diameter of two inches and a minimum height of ten (10) feet, two of those trees shall be planted in the front yard. Thereafter grass shall be maintained on the Lot at all times. The type tree shall be selected from a list approved by the Committee.
- (j) No signs whatsoever (except normal mailbox signage and one "for sale" sign per Lot not to exceed five (5) square feet), unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Property, nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any residence thereof. No business activity of any kind whatsoever shall be conducted in any building or in any portion of the Property; provided, however, the foregoing covenants shall not apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of the Declarant, its agents, and assigns during the development of the Property and the time period needed to sell the Lots.
- (k) No exterior television or radio antennas of any sort or other similar items shall be placed, allowed, or maintained upon the Property. Satellite dishes shall be permitted, but shall be fully screened from the view of all streets.
- (l) No building materials of any kind or character shall be placed or stored upon any Lot until the Owner is ready to commence improvements. Building materials shall be stored only within the property lines of the particular Lot involved.

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- (m) Excluding mail boxes, approved post lights, natural or approved vegetation and the needs of the Declarant, no obstruction shall be allowed within ten (10) feet of any right-of-way, except on property owned by the Association.
- (n) All out-buildings (including storage buildings and playhouses) equipment, air conditioning units, electrical transformers, garbage cans, service yards, dog pens or runs, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to completely conceal them from view of all streets. All rubbish, trash, or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon. Said outbuildings shall not exceed twelve (12) feet by twelve (12) feet in size, hipped roof, and shall not exceed ten feet in height with a minimum 6/12 pitch. The roofing and paint color must match the home on that lot. All plans for outbuildings must be approved by the Committee prior to construction until the Association is turned over to the Class A membership.
- (o) The construction of all swimming pools shall be approved by the Committee. All swimming pools shall be fenced in a manner to comply with applicable law and regulations and to prohibit easy access by small children. All such fences must be in full compliance with the fence restrictions hereinbefore set forth. No above-ground pools shall be allowed.
- (p) No recreation vehicles or commercial vehicles, including, without limitation, boats, boat trailers, horse trailers, motorcycles, trucks, camping trailers, or similar type items shall be kept other than in a garage or fully screened from the view of all streets on either a concrete or asphalt parking area. No automobile or other vehicle used by any Member or any resident shall be parked on any street. Further, no automobile or other vehicle shall be continuously or habitually parked on any street.
- (q) No tree with a diameter of six (6) or more inches, as measured two (2) feet from the ground, shall be removed without the approval of the Association. All aluminum or vinyl windows on at least the front elevation shall have wood brick mold. All roofing materials, exterior paint color, and brick colors are to be approved by the Committee.
- (r) The minimum heated floor area of any residence, excluding garages, storage rooms, workshops, etc. shall not be less than 2,000 square feet within a minimum of 1,400 square

feet on the ground floor in Phase I.

- (s) Each Residence must have a stone sign set within the exterior finish of the house bearing the address of that house. The type of stone sign and location will be approved by the Committee.
- (t) Exposed metal fireplaces shall not be allowed. All fireplace chimney chases shall be three tier wood trim and shall be approved by the Committee.
- (u) Setback lines and height restrictions shall be no less than those required by applicable governmental regulations and no less than those shown on the Plat. The Committee shall have the absolute right to control the precise site and location of any house or other structure upon all Lots. Such location shall be determined only after reasonable opportunity has been afforded to the Owner to recommend a specific site.
- (v) No Lot may be further subdivided. No portion of any Lot may be conveyed except with the prior written approval of the Committee.
- (w) The Declarant reserves unto itself the right to approve additional and separate restrictions at the time of sale of any of the Lots, which restrictions may differ from Lot to Lot.
- (x) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain, during the time period necessary for the sale of said Lots, upon such portion of the premises as the Declarant deems necessary, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the development of the Property and the sale of the Lots, including, without limitation, a business office, storage area, construction yard, signs, model units, and sales office.
- (y) There shall be no violation of any rules which may from time to time be adopted by the Board of Directors for the operation and use of the Property and promulgated among the membership by them in writing. The Board of Directors is hereby authorized to adopt such rules including the levying of appropriate fines.
- (z) The Declarant, in its sole discretion, or the Association, after approval by a majority vote of the Board of Directors, shall have the right, through agents and/or employees to enforce the aforesaid restrictive covenants and to enter upon any Lot in violation thereof for such purpose. Upon written notice from either the Declarant or the Association, any such

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violation shall be corrected by the Owner of the subject Lot. If fifteen (15) days after the notice of such violation, the Owner shall not have taken reasonable steps towards correction thereof, the Declarant or the Association, by their officers and directors, shall have the right, through agents and employees, to enter upon such Lot and take such steps as necessary to extinguish such violation. The costs thereof shall be the binding personal obligation of such Owners as well as a continuing lien upon the subject Lot upon the recording of a notice of lien with the Office of the Register of Shelby County, Tennessee. The provisions of the Article of this Declaration dealing with assessments and non-payment thereof, including, without limitation, the right and remedies given to the association therein, shall apply fully to the debt obligations, including interest and costs of collection, and the lien created in this section. Likewise, the terms and conditions of said Article dealing with subordination and mortgage protection shall be fully applicable.

#### ARTICLE XI.

##### MISCELLANEOUS

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, shall inure to the benefit of the Association and the Owners of any real estate subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, and shall remain in effect for a term of twenty (20) years from the date this Declaration is recorded unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES AND SHALL HAVE THE RIGHT FOR A PERIOD OF TEN (10) YEARS FROM THE DATE HEREOF TO UNILATERALLY AMEND THIS DECLARATION IN WHOLE OR IN PART IN ORDER TO CONFORM THIS DECLARATION TO THE REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL.

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Section 2. Enforcement. The Declarant, the Association, or any Member, shall have the right to enforce the terms and conditions of this Declaration by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement of the Declarant or the Association shall be chargeable to the Owner of the Lot violating these covenants and restrictions and shall constitute a lien on the Lot, collectible in the same manner as assessments hereunder.

Section 3. Hold Harmless And Owner's Responsibility. Each Owner, recognizing that certain risks are inherent in the building of houses, in activities in and about parks and in other aspects of building and recreation, does upon taking title to a Lot, hold harmless (1) the Declarant, (2) the Association, (3) any other entity managing or supervising the aforesaid activities which is owned and/or controlled or employed by the Declarant, by the Association or by some or all of the Members, and (4) their directors, officers, and employees, from any and all losses, liabilities, or damages which said Owner, his family, or guests may sustain resulting from the acts, and/or omissions of said entities, except for their gross negligence. Further each Owner shall be fully responsible for any and all losses or damages which might be caused by himself, his family or their invitees.

Section 4. Disclaimer. The Property may include some land that is filled or partially filled or that contains abandoned wells, underground springs or other characteristics which may affect its suitability for building. The Declarant makes no warranty or representation, express, implied or otherwise, as to the Property being undisturbed land or suitable for building, and shall not be liable for claims, losses or damages of any kind or character resulting from such conditions.

Section 5. Casualty And Liability Insurance. The Owner of each Lot shall carry in full force and effect casualty insurance in limits for the replacement value of Lot improvements located thereon and normal and reasonable general liability insurance. The Owner shall provide the Association a copy of the policies providing such coverage, and the policies shall contain a thirty (30) day notice of cancellation provision running to the benefit of the Association.



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Insurance on the Common Area, the Landscape Screen, and the Frontal Fence shall be carried and paid by the Association.

Section 6. Interest and Late Charges. Any amount due to the Association, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors of the Association, 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 said Board, be subject to such penalty or "late charges" as said Board may fix..

Section 7. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent with mailed, postpaid, to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

Section 8. Headings. All headings appearing herein are for convenience only and shall be disregarded in construing the substance provisions hereof.

Section 9. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

Section 10. Waiver. No restriction, condition, obligation or provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 11. Gender, Etc. Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

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

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**SIGNATURE PAGE TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RAINTREE P.D.**

**RAINTREE DEVELOPMENT COMPANY, LLC**

BY: *Gerald Laney*  
**GERALD LANEY, CHIEF MANAGER**

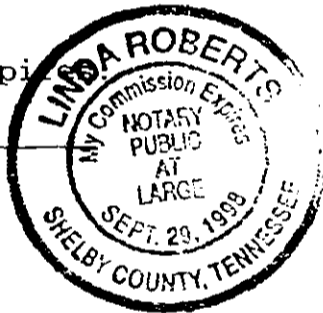
STATE OF TENNESSEE, COUNTY OF SHELBY

Before me, the undersigned Notary Public, of the State and County aforesaid, personally appeared GERALD LANEY, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the CHIEF MANAGER of RAINTREE DEVELOPMENT COMPANY, LLC, the within named bargainor, a limited liability company, and that he as such CHIEF MANAGER, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as such CHIEF MANAGER.

WITNESS my hand and seal at office this 2ND day of SEPTEMBER, 1997.

*Linda Roberts*  
Notary Public

My Commission Expires



PREPARED BY:  
RAINTREE DEVELOPMENT COMPANY, LLC  
8675 SOMERSET LANE  
GERMANTOWN, TN 38138

RETURN TO:  
H. LEE SHAW, P. C., ATTORNEY  
6075 POPLAR AVENUE, SUITE 420  
MEMPHIS, TN 38119

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No.
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STATE
6075 Poplar Ave

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REGISTERED  
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