

This instrument prepared by:
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1500 First Tennessee Plaza
Knoxville, TN 37929

SHERRY WITT
REGISTER OF DEEDS
KNOX COUNTY

Declaration of Covenants and Restrictions

of

The Battery at Berkeley Park

This Declaration of Covenants and Restrictions is made and entered into as of the 25 day of June, 2007, by FARRAGUT HOLDINGS, LLP, a Tennessee limited liability partnership ("Developer").

Developer is the owner of certain real property located in Knox County, Tennessee, being more particularly described as all property depicted on the final plat of The Battery at Berkeley Park, of record as Instrument Number 200706180103901 in the Register's Office for Knox County, Tennessee and also described in Exhibit "A" attached hereto (the "Property").

Developer desires to create on the Property a traditional Charleston style, residential community known as The Battery at Berkeley Park (the "Subdivision"). The Subdivision shall consist of 54 premier lots, as shown on the plat.

The Subdivision will have common facilities for the use and benefit of all residents in the Subdivision.


Developer desires to provide for the preservation of the values in the Subdivision and for the maintenance of common facilities and, to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each owner thereof.

Developer has deemed it desirable to create an entity to which should be delegated and assigned the powers of maintaining and administering the community and facilities, administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created. In order to carry out such duties, Developer has incorporated under the laws of the State of Tennessee a non-profit corporation known as THE BATTERY AT BERKELEY PARK HOMEOWNERS' ASSOCIATION, INC.

NOW, THEREFORE, the Developer declares that the Property and all lots which are a part thereof are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

Developer adopts and incorporates by reference the terms and conditions of the Covenants and Restrictions of Berkeley Park as set forth in Deed Book 2313, page 388, and as amended by Instrument Number 200504130081440 in the Knox County Register's Office TO THE EXTENT OF ANY CONFLICT BETWEEN. THE RESTRICTIONS OF BERKELEY PARK SETOUT ABOVE AND THE RESTRICTIONS OF THE BATTERY, THE RESTRICTIONS APPLICABLE TO THE BATTERY SHALL CONTROL.

The following changes, deletions and insertions to the Berkeley Park restrictions are made as follows:


Instr: 200706250106066 Page: 1 OF 5
REC'D FOR REC. 06/25/2007 3:34:36PM
RECORD FEE: \$27.00
M. TAX: \$0.00 T. TAX: \$0.00

Article I, Section 1, shall be amended to read:

"Architectural Control Committee" shall mean and refer to Farragut Holdings, LLP, or such other individuals as Developer may appoint, until all lots in the Battery at Berkeley Park shall have been fully developed and permanent improvements constructed thereon and sold to permanent residents; at which time such term shall mean and refer to those persons selected annually by the Board in compliance with the declaration of the Association to serve as members of said committee.

Article I, Section 2, shall be amended to read:

"Association" shall mean and refer to the Battery at Berkeley Park Homeowner's Association, Inc, its successors or assigns.

Article I, Section 4, shall be amended to read:

"Common Area" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners, including the subdivision's park(s), clubhouse and pool, detention ponds, designated public areas, open greenbelt, and any other real estate within the Battery at Berkeley Park that is not part of a "Lot" or a dedicated road or street and includes the common areas known as Lots 56, 57, 58, 59, 60, 61, 62, & 63, as depicted on the Final Plat for The Battery at Berkeley Park, recorded as Instrument Number 200706180103901.

Article I, Section 7, shall be amended to read:

"Developer" shall mean and refer to (i) Farragut Holdings, LLP, or (ii) any successor-in-title or any successor-in-interest to Farragut Holdings, LLP to all or any portion of the Property, provided in the instrument of conveyance to any such successor-in-title or interest, such successor-in-title is expressly designated as the "Developer" hereunder by the grantor of such conveyance, which grantor shall be the Developer hereunder at the time of such conveyance.

Article I, Section 11, shall be amended to read:

"Plat" shall mean and refer to that certain Final Subdivision Plat for The Battery at Berkeley Park, recorded as Instrument number 200706180103901 in the Register's Office for Knox County, Tennessee.

Article I, Section 12, shall be amended to read:

"Property" shall mean and refer to that certain real property described on the plat in Article I, Section 11 above.

Article II, Section 3, shall be amended to read:

Construction Bond. On all structures, the Builder or Homeowner shall submit to the Architectural Control Committee a Construction Bond of five thousand dollars (\$5,000.00) in cash per unit to be held in escrow by the Architectural Control Committee until the improvements are complete and the Architectural Control Committee performs its Final Inspection. The Developer shall be exempt from this requirement. This exemption shall not apply to members, managers, partners or stockholders of the Developer doing construction for their own purposes. The construction bond shall be use to offset any costs incurred by the Association or the Architectural Control Committee as a result of or to:

- (a) Repair damage to any property caused by the Builder or Homeowner or their subcontractors, suppliers, and representatives during construction;
- (b) The expenditure of legal fees and other costs incurred by the Architectural Control Committee in order to correct and construction or alteration not performed in substantial compliance with the plans receiving Final Approval; and
- (c) Pay for any fines or penalties imposed by the Architectural Control Committee or the Association for violations of any rules of conduct or regulations governing use of property within the Battery at Berkeley Park.

In the event that a builder/homeowner is constructing more than one residential unit, the builder/homeowner shall be required to submit \$3000.00 for each additional unit

placed under construction. A minimum of \$5000.00 shall be maintained in escrow at all times builder/homeowner has one or more units under construction in The Battery at Berkeley Park. The Construction Bond shall be paid into escrow at the closing of each lot.

Article II, Section 4 shall be amended to read:

Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefore shall have been first submitted to and approved in writing by the Architectural Control Committee. Homes are to be constructed typifying historic 18th and 19th century residential architecture similar to residential construction of The Battery at Charleston, South Carolina. Developer will provide a minimum of 18 blue printed home designs and 8 compatible floor plans custom drawn exclusively for The Battery at Berkeley Park. Lot owner **must** use one of the exclusive custom home designs referred to as The Battery Custom Home Collection or contract the services of the same home design company used by developer. The existing plans may be modified or entirely new plans drawn specifically for the lot owner or builder, but they must typify the Charleston theme and be approved by the developer. All costs associated with any changes shall be borne by the lot owner or builder. *Failure to construct a home following the plans from The Battery Custom Home Collection or as provided above shall be at the lot owner's/builder's peril.* Any and all costs associated with bringing a unit's construction into compliance with the themed nature of this development shall be borne by the lot owner/builder, including attorneys' fees.

Article VII, Section 2 shall be amended to read:

Purpose of Assessments. The Annual Assessment is fixed for two (2) years until June 1, 2009. The annual assessment of \$1800.00 will be collected and pro-rated at closing. The homeowner's association will bill the lot owner beginning with the homeowner's association fiscal 2008-2009 year. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Battery at Berkeley Park; to pay Common Expenses, including, but not limited to, the cost of the improvement and maintenance of the Common Area and Area of Common Responsibility situated upon the Battery at Berkeley Park, including management fees to others to make such repairs as the Association may deem necessary; to pay ad valorem taxes and other charges for services provide by the Association assessed against the Association Property and to pay insurance premiums; to pay for electricity for exterior lighting in the Common Area, and for other purposes as the Board may determine, including storm water detention, control, and dispersal facilities on common property or otherwise maintained by the Association. In addition, the Assessments shall include amounts necessary to establish an adequate reserve fund for routine and normal preventative maintenance, repairs and replacement of those portions of the Common Area and Area of Common Responsibility that must be replaced on a periodic basis. Such reserve fund shall be included in the annual Assessment and shall be payable in periodic installments rather than by special assessment.

Article VII, Section 7 shall be amended to read:

Fiscal Year, Membership and Annual Assessments. The fiscal year for THE BATTERY AT BERKELEY PARK HOMEOWNER'S ASSOCIATION shall begin on June 1 and end on May 31. A pro-rated portion of the quarterly payments shall be due and membership shall begin on the day that ownership in the Battery at Berkeley Park begins. Upon a person or entity's ceasing to be a Member of the Association, such Member shall not be entitled to any refund of his annual assessment. The Developer shall not be responsible for assessments on Lots which do not have a completed residence constructed thereon.

Article VIII, Section 1(b)(1) & (2) are deleted as inapplicable.

Article IX, Section 4 is deleted.

Article X, Section 8 shall be amended to read:

Setbacks. In approving plans and specifications for any proposed Structure, the Architectural Control Committee may establish setbacks. Those setbacks shall refer to any setbacks required and imposed by the Town of Farragut through its planning commission. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

Article X, Section 21(b) shall be amended to read:

A minimum landscape allowance of thirteen thousand dollars(\$13,000.00) will be required for each home and shall increase by five(5) percent per year for five(5) consecutive years, with the first increase taking place for homes starting construction after July 1, 2007 and increasing by five(5) percent on July 1 of each year for the next four(4) years. Landscape allowance includes costs associated with sod and irrigation.

Article X, Section 21(g) is deleted.

Article X, Section 21(h) shall be amended to read:

Backyard Area/Interior for All Lots. Landscaping in this area refers to that portion of the Lot from the primary wall line of the house back toward the rear property line for a distance of — feet. In this area, additional privacy screen plantings for windows, porches, decks, swimming pools and spas and other activity areas may be planted with the approval of the Architectural Control Committee. Decks, swimming pools and spas, additional patios, pavement or outdoor structures may on be built in this area of each lot.

Article X, Section 21(i) shall be amended to delete the last sentence of the paragraph.

Article XII, Section 6 shall be amended to read:

Notices. Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at his Lot or at such other address as hereinafter provided. Notices to the Developer shall be in writing and shall be addressed to Farragut Holdings, LLP, 11356 Parkside Drive, Knoxville, TN 37934 or at such different address as disclosed in a written notice of change of address furnished to all Owners. Any Owner may designate a different address for notices to him by giving written notice to the Developer. All notices to Owners and Developer shall be deemed delivered upon mailing by United States registered or certified mail, return receipt requested, or when delivered in person.

Article XII is amended to add a **Section 11** which shall read:

The Battery at Berkeley Park is a self-contained subdivision separate from the Berkeley Park subdivision with joint use of the pool and club house as defined in the amendment recorded as Instrument #200504130081440 in the Knox County Register's Office. The reference, *The Battery at Berkeley Park*, is intended to replace "Berkeley Park" in the incorporated restrictions as described in Deed Book 2313, page 388, in the Knox County Register's Office, where such replacement adds clarity and intent to further the aims of this separateness.

IN WITNESS WHEREOF, Farragut Holdings, LLP, has caused this instrument to be executed and its name to be signed this 25 day of June, 2007.

FARRAGUT HOLDINGS, LLP

By: [Signature]

Its: Managing Partner

STATE OF TENNESSEE)
COUNTY OF Knox)

Before me, the undersigned authority, a Notary Public in and for said County and State aforesaid, personally appeared Philip E. Cobble, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged him/herself to be the Managing Partner of FARRAGUT HOLDINGS, LLP, the within named bargainer, a Tennessee limited liability partnership, and that s(he) as such partner executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability partnership by him/herself as such Partner.

Witness my hand seal at office in Knox County, this 25th day of June, 2007.

My Commission Expires:
March 14, 2009

Karen G. Eldridge
Notary Public



T:jhunt/Restrictions/Battery at Berkeley Park