

**This Instrument Prepared By:  
Foundation Title and Escrow Series, LLC  
Commercial Services Division  
277 Mallory Station Road, Suite 102  
Franklin, TN 37067**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR CAPE TOWNHOMES  
A PLANNED UNIT DEVELOPMENT**

This Declaration of Covenants, Conditions, and Restrictions (hereinafter referred to as “Declaration”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by CAPE TOWNHOMES, LLC, a Tennessee Limited Liability Company (hereinafter referred to as “Owner” and sometimes also referred to as “Developer”).

Owner is the owner and developer of the real property described in Exhibit “A” attached hereto and incorporated herein by reference. Owner and Developer (hereinafter referred to as collectively as “Declarant”) intend by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Properties. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation; use and enjoyment of such Properties as are now or hereafter subjected to this Declaration.

Declarant hereby declares that all the Properties described in Exhibit “A” and any additional property as is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

**This Declaration does not and is not intended to create a condominium within the meaning of the Tennessee Horizontal Property Act, Tenn. Code Ann. §§ 66.27-101, *et seq.***

Declarant desires to complete the development of the Cape TOWNHOMES, a planned nit development, including the infrastructure thereof and the common amenities thereto.

Declarant has deemed desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created.

Declarant has caused or will cause to be incorporated under the laws of the laws of the state of Tennessee, as a non-profit corporation, the Cape TOWNHOMES Homeowners Association, Inc. for the purpose of exercising the functions aforesaid.

Now, thereof, the Declarant hereby declares that the real property described in Exhibit "A" hereof is and shall be held transferred, sold, conveyed, and occupied subject to the covenants, conditions, restriction, easements, charges and liens (sometimes referred to herein as the "Covenants, Conditions, and Restrictions" or as the "Restrictions") hereinafter set forth which are for the purpose of protecting the value and desirability of and which shall run the real property and be binding upon all parties having any right, title, or interest in the describes properties or any part thereof, their heirs, successors or assigns and shall inure to the benefit of each owner thereof.

## **ARTICLE I** **DEFINITIONS**

Section 1. Area of Common Responsibility shall mean and refer to the Area, together with those areas, if any, which by the terms of this Declaration or by contract become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public right-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility.

Section 2. Articles of Incorporation or Articles shall mean and refer to the Articles of Incorporation of Cape TOWNHOMES Homeowners Association, Inc. as file with the Secretary of State of the State of Tennessee.

Section 3. Association shall mean and refer to Cape Townhomes Homeowners Association Inc., a Tennessee nonprofit corporation its successors or assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Tennessee corporate law. A copy of the association's corporate charter is attached hereto as Exhibit "B" and incorporated herein by reference as may be amended from time to time.

Section 4. Base Assessment shall mean and refer to assessments levied against all Unit/Lot s in the Properties to fund Common Expenses.

Section 5. By Laws" shall mean and refer to Cape Townhomes Homeowners Association Inc. attached hereto as Exhibit "C" and incorporated herein by reference as may be amended from time to time.

Section 6. Class "B" Control Period shall mean and refer to the period of time during which the Declarant, as the Class "B" Member is entitled to appoint at least a majority of the members of the Board of Directors as provided in Article III, Section 2(b) of the Declaration and the By-Laws.

Section 7. Common Area shall mean all real and personal property, which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all owners. The initial Common Area shall be conveyed to the Association prior to the conveyance of any Unit/Lot purchaser other than a builder or developer holding title for the purpose of development and resale.

Section 8. Common Expenses shall mean and include the actual estimated expenses incurred by the association for the general benefit of all Unit/Lot Owners including any reasonable reserve all as many found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws and the Articles of Incorporation of the Association.

Section 9. Community-Wide Standard shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. The Board of Directors and the Architectural Review Committee may more specifically determine such standard.

Section 10. Declarant shall mean and refer jointly to CAPE TOWNHOMES, LLC, a Tennessee Limited Liability Company, their successors and/or assigns.

Section 11. Member shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 12. Mortgage shall mean and refer to a purchase money lien against the title to any Unit/Lot .

Section 13. Mortgagee shall mean and refer to a beneficiary or holder of a Mortgage.

Section 14. Mortgagor shall mean and refer to any person who gives a Mortgage.

Section 15. Owner shall mean and refer to one (1) or more persons who hold the record title to any Unit/Lot , which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit/Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the owner.

Section 16. Person means a natural person, a corporation, a partnership, a trust, or any other legal entity.

Section 17. Properties shall mean and refer to the real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 18. Special Assessment shall mean and refer to assessments levied in accordance with Article X, Section 4 of this Declaration.

Section 19. Supplemental Declaration shall mean an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein or both.

Section 20. Unit/Lot shall mean a portion of the Properties, whether developed or undeveloped, intended for occupancy as a residence for a single family. The term shall include all portions of the lot owned, including any structure thereon. In the case of a parcel of vacant land on which improvements are under construction, the parcel shall be deemed to contain the number of Units/Lots planned for such parcel until such time as a certificate of occupancy is issued on all or a portion thereof by the local government entity having jurisdiction, after which the portion designated in the certificate of occupancy shall constitute a separate Unit/Lot or Units/Lots as determined above and the number of Units/Lots on the remaining land, if any, shall continue to be

determined in accordance with this section. To the extent any Units/Lots share a common wall and/or roof with an adjoining Unit/Lot, then such wall and/or roof shall constitute a party and the general rules of Tennessee law shall govern in regard to damage from negligence or willful acts or omissions. The cost of reasonable repair and maintenance of party walls and/or roofs shall be shared by the Owners that made use of such party walls and/or roofs proportionate to such use.

## **ARTICLE II**

### **PROPERTY RIGHTS**

Every Owner shall have a right and easement in and to the Common Area, subjected to this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of regulation by the board and in accordance with procedures it may adopt. An owner who leases his or her Unit/Lot shall be deemed to have delegated all such rights to the Unit/Lot 's lessee.

Declarant reserves the right to amend this Declaration unilaterally at any time, without prior notice and without the consent of any person, for the person of removing certain portions of the Properties then owned by the Declarant or its affiliated or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for Cape Townhomes desired to be effected by the declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Cape Townhomes.

## **ARTICLE III**

### **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association. No owner whether one (1) or more persons, shall have more than one (1) membership per Unit/Lot owned. The rights and privileges of membership may be exercised by a member or the member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Unit/Lot owned by a corporation or partnership shall be exercised by the individual designated by the Owner in writing to the secretary of the Association subject to the provisions of this Declaration and the By-Laws.

Section 2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B", which are defined as follows.

(a) Class "A" Members shall be all Owners except for the Class B members, if any. Class "A" Members shall be entitled to one (1) equal vote for each Unit/Lot in which they hold the interest required for membership under Section 1 hereof.

(b) Class "B" Member shall be the declarant. The rights of the Class "B" member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" member shall be entitled to in its sole discretion, appoint the members of the board of directors during the Class "B" Control period subject only to Article III, Section 6 and any Committee as provided in Article III Section 3 of the By-Laws. The Class "B" Controls Period shall terminate, and the class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

- (i) When seventy-five percent (75%) of the Unit/Lot s planned for the Properties have certificates of occupancy issued thereon and have been conveyed to persons other than the declarant or builders holding title solely for the purpose of re-sale;
- (ii) January 1, 2031; or
- (iii) When in its discretion, the class “B” Member so determines.

**ARTICLE IV**  
**MAINTENANCE**

Section 1. Association’s Responsibility. The association shall maintain and keep in good repair the Common Area, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement of all landscaping and other flora, structures, and improvements situated upon the Common Areas. Maintenance may also include such portions of any additional property included within the Common Area as many are dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association.

Except as otherwise specifically provided herein, all costs associated with the maintenance, repair and replacement of Common Areas shall be a Common Expense to be allocated among all Unit/Lot s as part of this Declaration.

The Association may maintain property, which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Section 2. Owner’s Responsibility. Each owner shall maintain his or her Unit/Lot and all structures, exterior surfaces of the Unit/Lot , parking areas, fences, and other improvements comprising the Unit/Lot in a manner consistent with the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. If any owner fails properly to perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the association against the Unit/Lot and the owner thereof in accordance with Article X Section 4 of this Declaration provided that the Association shall afford the owner reasonable notice and an opportunity to cure the problem prior to entry except when entry is required due to an emergency situation,

**ARTICLE V**  
**INSURANCE AND CASUALTY LOSSES**

Section 1. Insurance. The Association’s Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of all structures located on Units/Lots.

The Board shall also obtain a public liability policy covering the Common Area, the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The publicly liability policy shall have at least a One million and

00/100 Dollar (\$1,000,000,000) single person limit as respects bodily injury and property damage and a Two million and 00/100 Dollar (\$2,000,000,000) limit on aggregate property damage.

Premiums for all insurance policies shall be included in the Base Assessment as defined in Article X Section 1. The policy may contain a reasonable deductible, and in the case of casualty insurance, the amount thereof shall be added to the amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss of repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the members as benefited parties, as further identified in subsection (b) below. Such insurance shall be further governed by the provisions hereinafter set forth

(a) All policies shall be written with a company licensed to do business in Tennessee which holds a Best's rating of A or better and its assigned a financial size category of XI or larger as established by A.M. Best Company, Inc. if reasonably available, or if not available, the most nearly equivalent rating.

(b) All policies shall be for the benefit of the Association and its members and their mortgages, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Properties shall be vested in the Association's Board of Directors provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be bought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Middle Tennessee area.

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

(i) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) A waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) A statement that no policy may be cancelled, invalidated suspended, or subject to nonrenewal on account of the actions of any one or more individual owners;

(iv) A statement that a policy may be cancelled, invalidated, suspended, or subject to nonrenewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter whereby the defect may be cured by the Association, its manager, any Owner or Mortgagee;

(v) That any “other insurance” clause in any policy excludes individual Owner’s policies from consideration; and

(vi) That the Association will be given at least thirty (30) days’ prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain as a common expense, workers compensation insurance, if and to the extent required by law, and a fidelity bond on directors, officers, employees and other persons handling or responsible for the Association’s funds, if reasonably available as well as flood insurance, if required, The amount of fidelity coverage shall be determined in the directors’ best business judgment but, if reasonably available, may not be less than three (3) months’ assessments on all Unit/Lot s, plus reserves on hand. Bonds shall contain a waiver of all defenses based on all the exclusion of person serving without compensation and shall require at least thirty (30) days’ prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

Section 2. Individual Insurance. By virtue of taking title to a Unit/Lot subject to the terms of this Declaration, each owner covenants and agrees with all other owners and with the Association that each owner shall carry blanket all-risk casualty insurance on the Unit/Lot s and structures constructed thereon meeting the same requirements as set forth in Section 1 of this Article V for insurance on the Common Area, unless the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising an individual Unit/Lot the owner shall proceed promptly to repair or to reconstruct the damage and the destruction of structure comprising said Unit/Lot and the owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. The owner shall pay any costs of repair or reconstruction which is not covered by insurance proceeds. In the event that the structure is totally destroyed, the owner may decide not to rebuild or reconstruct in which case the owner shall clear the Unit/Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the owner shall continue to maintain the Unit/Lot in a neat and attractive condition consistent with the Community-Wide Standard.

Section 3. Damage and Destruction.

(a) Immediately after damage or destruction by fire or casualty to all or any part of the Properties covered by insurance written in the name of the association, the Board of Directors or its duly authorized agent shall proceed with filing and adjusting all claims arising under such insurance and obtain reliable and detailed estimates of the cost or repair or reconstruction of the damage or destroyed Properties. Repair or reconstruction, as used in this subsection, means repairing or restoring the Properties to substantially the same condition in which

they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the members representing at least seventy-five percent (75%) of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until that information can be made available; provided however such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association in the near and attractive condition consistent with the Community-Wide Standard.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction to the Common Area. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit/Lot and may be enforced by such Mortgagee.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Area is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without, the necessity of a vote of the members, levy a special assessment against all owners on the same basis as provided for Base Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## **ARTICLE VI** **NO PARTITION**

Except as is permitted in this Declaration or amendments thereto, there shall be no physical partition of the Common Area nor may any party seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property, which may or may not be subject to this Declaration.

## **ARTICLE VII** **CONDEMNATION**

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Declarant, as long as



the Declarant owns any property described on Exhibit "A" or domain, each owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described on Exhibit "A" or approved preliminary plat of one hundred (100%) percent of the total vote of the Association shall restore and replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available thereof, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after such restoration or replacement is completed, then such award or net funds remaining shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

## **ARTICLE VIII**

### **ANNEXATION OF ADDITIONAL PROPERTY**

Section 1. Annexation Without Approval Of Class "A" Membership. Declarant shall have the unilateral right, privilege, and option, from time to time as a Class "B" member to annex additional real property and subject it to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall be accomplished by filing in the public records of Hamilton County, Tennessee, an amendment to this Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Class "A" members.

Section 2. Annexation With Approval of Class "A" Membership. The Association may annex additional real property and subject it to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of members representing a majority of the class "A" votes of the Association (other than those held by declarant) present at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Section 1 of this Article. Annexation shall be accomplished by filling of record in the public records of Hamilton County, Tennessee a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein.

Section 3. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibit "A" or upon Annexed Property which upon conveyance or dedication to the Association at its expense for the benefit of all its members.

Section 4. Amendment. This Article shall not be amended without prior written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" hereof.

**ARTICLE IX**  
**RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

Section 1. Common Area. The Association, subject to the rights of the owners set forth in this Declaration, shall be responsible for the exclusive management and control of the common area and all improvements thereon (including, without limitation, furnishing and equipment related thereto and common landscaped areas) and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Association through action of its Board of Directors may acquire hold, and dispose of tangible and intangible personal property and real property. The board acting on behalf of the Association shall accept any real property or personal property, leasehold, or other property interests within the properties conveyed to it by the Declarant.

Section 3. Community Standards. The Association through its Board of Directors may make and enforce reasonable community standards governing the use of the Properties, which community standards shall be consistent with the rights and duties set forth herein. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided by the By-Laws of the Association. The Association, acting through the Board by contract or other agreement, shall have the right to seek enforcement of applicable ordinances for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**ARTICLE X**  
**ASSESSMENTS**

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 7 of this Article. There shall be two (2) types of assessments: (a) Base Assessments to fund Common Expenses for the benefit of all Members of the Association; and (b) Special Assessments as described in Section 4 below. Base Assessments shall be levied equally on all Units/Lots. Special Assessments shall be levied as provided in Section 3 below. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these assessments.

Base Assessments, together with interest at a rate not to exceed ten (10%) percent or the highest rate allowed by Tennessee law as computed from the date the delinquency first occurs costs, and reasonable attorney's fees shall be a charged on the Unit/Lot and shall be a continuing lien upon the Unit/Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Unit/Lot at the time the assessment arose, but his or her grantee shall not be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance unless the obligation is expressly assumed by them. No Mortgagee who obtains title to a Unit/Lot pursuant to the remedies provided in the Mortgage shall be liable for such portion thereof as may be due and payable at the time of conveyance unless they expressly assume the obligation.

No Mortgagee who obtains title to a Unit/Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments, which accrued prior to acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Unit/Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessments therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed TWO HUNDRED FIFTY and 00/100 Dollars (\$250.00) for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual Base Assessment for delinquents, including Owners' delinquent in the payment of fines imposed in accordance with the By-Laws. Unless the Board otherwise provides, the Base Assessment shall be paid in monthly installments.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit/Lot. The obligation to pay assessments is a separate and independent covenant on the part of each owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any other or directive of any municipal or other governmental authority.

So long as the Declarant has an option unilaterally to subject additional property to this declaration, the following shall apply: unless assessments have commenced, pursuant to Section 7 below, on all Units/Lots subject to this Declaration as of the first day of any fiscal year, the declarant shall be obligated for the difference between the amount of actual expenditures required to operate the Association during the fiscal year. The obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entries for the payment of some portion of the Common Expenses.

Section 2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget may include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared. The Base Assessment to be levied for the coming year against each Unit/Lot subject to assessment under Section 7 below shall be computed by dividing the budgeted Common Expenses by the total number of Units/Lots subject to Assessments as of sixty (60) days before the end of the current fiscal year. The Board shall cause a copy of the Common Expenses budget and notice of the amount of Base Assessment to be levied against each Unit/Lot for the following year to be delivered to each owner at least thirty (30) days prior to the beginning of the fiscal year. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings the By-Laws.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

Section 3. Special Assessments. In addition to the assessments authorized in Section 1 of this Article, the Association may levy a Special Assessment not to exceed fifteen (15%) percent of the budget. Special Assessments shall be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

The board may also levy a Special Assessment against any Member, without the necessity of a vote of the Members, to reimburse the Association for costs incurred in bringing a Member and his Unit/Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules, which Special Assessments may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

Section 4. Lien for Assessments. Upon recording of a notice of lien on any Unit/Lot, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens except (1) all governmental taxes and assessments and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure. The sale or transfer of any Unit/Lot shall not affect the lien of assessments.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit/Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit/Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) No assessment shall be assessed or levied on it; and (c) each other Unit/Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessments that would have been charged such Unit/Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 5. Capital Budget and Contribution. The Board of Directors may annually prepare a capital budget to take into account the number and nature of replacement cost. The Board may set the required capital contribution, if any in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board of Directors and included within and distributed with the budget and assessment, as provided in Section 2 of this Article.

Section 6. Date of Commencement of Annual Assessments. The assessments provided for herein shall commence as to all Units/Lots upon conveyance of the first Unit/Lot to a person other than a builder or developer holding title solely for purposes of development and/or resale. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessments shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit/Lot.

Section 7. Subordination of the Lien to First Mortgages. The lien of assessments including interest, late charges (subject to the limitations of Tennessee law) provided for herein,

shall be subordinate to the lien of any first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) upon any Unit/Lot. A foreclosure sale or transfer in lieu of a first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No foreclosure sale or transfer in lieu of a mortgage, first or otherwise, shall relieve such Unit/Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit/Lot obtains title pursuant to remedies under the Mortgage holding a first Mortgage of record or other purchaser of a Unit/Lot obtains pursuant to remedies under the Mortgage, its successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Unit/Lot which became due prior to the acquisition of title to such Unit/Lot by such acquirer but shall be liable otherwise. Such unpaid share of Common Expenses shall be collected from Owners of all Units/Lots, including such acquirer, its successors and assigns.

Section 8. Capitalization of Association. Upon acquisition title to a Unit/Lot by the first purchaser thereof other than the Declarant or an owner who purchases solely for the purposes of constructing a dwelling thereon for resale, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount not to exceed FIVE HUNDRED and 00/100 Dollars (\$500.00) per Unit/Lot for that year as determined by the Board. This amount shall be deposited into the purchase and sales escrow and disbursed to the Association to cover operating expenses and other expenses incurred by the association pursuant to the terms of this Declaration and the By-Laws.

Section 9. Exempt Property. Notwithstanding anything to the contrary herein, all Common Area shall be exempt from payment of Base Assessments and Special Assessments.

## **ARTICLE XI**

### **ARCHITECTURAL STANDARDS**

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Section 1 and 2 of this Article XI. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the approval of the appropriate committee has been obtained. The following minimum design standards shall apply:

The Declarant at the time of sale and/or the plat is recorded for each phase/section of Cape Townhomes has the right to establish additional design standards to be used on homes in that particular phase/section of Cape Townhomes.

Section 1. Residences. The size of the residence including minimal living area shall be described in the design standard promulgated by Developer for each section of the Cape TOWNHOMES development. The minimum total floor area of a residential structure shall be at least (i) 1,800 square feet (one story homes); (ii) 1,000 square feet on the ground floor and 1,800 square feet total (one and one-half story homes); and (iii) 900 square feet on the ground floor and 1,800 square feet total (two story homes). All residences shall have (i) 8" fascia and 6" soffits; (ii) roof pitches of not less 8:12; and (iii) chimneys (if any) of brick or brick veneer.

Section 2. New Construction Committee. The New Construction Committee (“NCC”) shall have exclusive jurisdiction over all original construction on any portion of the Properties. The NCC shall prepare and, on behalf of the board of directors, shall promulgate design and development guidelines and application and review procedures. Copies shall be available from the New Construction Committee for review. The guidelines and procedures shall be those of the Association, and the NCC shall have sole and full authority to prepare and to amend the guidelines and procedures. All Owners, builders and developers shall conduct their operations strictly in accordance with the guidelines and procedures of the NCC until one hundred percent (100%) of the properties have been developed and conveyed to purchasers.

In the normal course of development and sale, the Declarant retains the right to appoint all members of the NCC, which shall consist of at least three (3), but no more than five (5) persons. Declarant may surrender and at that time the Board of Directors shall appoint the members of the NCC in the same manner as provided in Section 2 of this Article for the Architectural Review or Modifications Committee (“ARC/MC”).

The guidelines of the NCC shall follow the following standards: (i) thirty percent (30%) of the homes in the development shall have a full brick or stone foundation with “Hardie Plank” or equivalent siding and a front porch; (ii) forty percent (40%) of the homes in the development shall have exteriors with seventy percent (70%) brick or stone; and (iii) thirty percent of the homes in the development shall have exteriors with one hundred percent (100%) brick or stone.

Section 3. Architectural Review Or Modifications Committee. The Board of Directors may appoint an Architectural Review or Modifications Committee (“ARC/MC”) to consist of at least three (3) and no more than five (5) persons, all of whom shall be appointed by the Board of Directors. The ARC/MC, if established, shall have exclusive jurisdiction over modification, additions, or alterations made on or to existing Units/Lots or structures containing Unit/Lot s and the open space, if any, appurtenant thereto. Members of the Board of Directors may be members of the ARC/MC.

The ARC/MC shall promulgate detailed standards and procedures governing its areas of responsibility and practice, consistent with the guidelines and procedures of the NCC. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the ARC/MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of a Unit/Lot, or to paint the interior of a Unit/Lot.

Section 4. No Waiver of Future Approvals. The approval of either the NCC or ARC/MC of any proposals or plans and specifications, or drawings will not preclude its right to withhold approval or consent as to any similar proposals, plans and specifications, or drawings subsequently or additionally submitted for approval or consent.

Section 5. Variance. The NCC may authorize variances from compliance with any of the provisions of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with duly adopted community standards. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the committee from denying a variance in other circumstances. For purposes of this Section, the ability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 6. Enforcement In General

(a) Enforcement of the design standards as specified in Exhibit "D" may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate a covenant or restriction, either to restrain a violation or to recover damages. Failure by the Declarant, community association or owner to enforce any restriction herein contained shall in no event be deemed a waiver of the rights to do so thereafter nor constitute an acquiescence in or an estoppel to any, actual or future, breaches or violations of these covenants and restrictions.

(b) In the event any cost or expenses including attorney's fees, are incurred by the Declarant, community association or any lot owner or occupant of a lot in connection with their action to correct or abate any violation or breach of the provisions hereof, provided reasonable notice to the owner or owners of the subject lot or lots to abate said violation or breach has been given, such cost and expenses shall be a lien against the owner or owners of the lot or lots committing such a breach of violation and such charges shall be subject to the provisions for lien when the nonexistence of a violation of breach hereof has been established by a court of competent jurisdiction. The court shall determine the method of handling a violation.

Section 7. Covenant and Creation of the Lien of Personal Obligation for Court Ordered Violation in Section 6

The Developer for each lot owned by him within the subdivision covenants agrees, and each owner of any lot by acceptance of a deed thereof whether or not it shall be so expressed in such deed as the conveyance shall be deemed to covenant and agree, to pay any court ordered violation cost and other costs or expenses incurred in Section 6, together with such intent thereon and cost of collection thereof, including attorneys fees, as provided herein, and shall be a lien on the property and shall be a continuing lien upon the property against which each such obligation is made. It shall also be the personal obligation of each person who was an owner of such property at the time of the violation

Section 8. Assignment. The rights and powers retained by the Declarant shall be freely assignable and shall insure to the benefit of its successors and assigns.

**ARTICLE XII**  
**USE RESTRICTIONS**

The properties shall be used only for residential, recreational, and related purposes which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association as may more particularly be set forth in this Declaration or amendments hereto.

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, cancelled or modified in a regular or special meeting of the Association by the vote of Members representing a Majority of the total Class "A" votes in the association and with the consent of the Class "B" member, so long as such membership shall exist.

Section 1. Signs. No sign of any kind shall be erected within the properties without the written consent of the Board of Directors. The Board of Directors shall have the right to erect signs, as it, in its discretion, deems appropriate. Temporary signs, not exceeding a maximum face area of 36" by 24", such as "For Sale" signs, shall be permitted so long as (i) there shall be no more than one (1) sign per Unit/Lot, and (ii) no such sign shall be placed outside the Unit/Lot within street right-of-ways, common areas of Unit/Lots owned by others. Developer reserves the right to erect and maintain signs for its use and the use of other parties involved in the construction of improvements within the development and/or the sale of lots within the development.

Section 2. Parking and Garages. Each residence must have at least a two-car garage, attached to the residence. Vehicles shall be parked only in the garages or in the driveways, serving the Unit/Lots or in appropriate spaces or designated areas in which parking may or may not be assigned. No more than three (3) vehicles may be parked in any driveway. No parking shall be permitted on any street, except temporarily for social gatherings. Commercial vehicles, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats, and other watercraft, and boat trailers may be parked for a period of up to 48 hours with approval of the Board of Directors to accommodate or allow owners time to find storage or parking space other than the Cape TOWNHOMES community. Boats and other watercraft may be stored or parked in garage or basement if entry door can be closed.

Section 3. Occupants Bound. All provisions of the Declaration, By-Laws and of any community standards or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit/Lot.

Section 4. Animals and Pets. No animals, reptiles, livestock, birds, or poultry of any kind shall be raised, bred, or kept on any portion of the properties, except that dogs, cats, or other usual and common household pets not to exceed a total of three (3) may be permitted in a Unit/Lot. However, those pets which are permitted to roam free, or in the sole discretion of the Association, which endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units/Lots or the owner of any portion of the Properties shall be removed upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board and turned over to the appropriate agency for keeping or disposal. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Unit/Lot be confined on a leash held by or under the physical control of a responsible person or contained by a fence. No dog runs are allowed.

Section 5. Nuisance. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or materials be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of



the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any portion of the properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or diminish or destroy the environment of the Properties.

Section 6. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Unit/Lot. The pursuit of hobbies or other actives, including specifically, without limiting the generality of the foregoing, the assembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties (except in the confines of the residence).

Section 7(a). Antennas. No exterior antennas, aerials, satellite dishes (except as set forth in Section 7(b)), or other apparatus for the transmission of television, radio, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Unit/Lot, without the prior written consent of the Board or its designee. The satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or portion of the Properties, should any such master system or systems be utilized by the Association is hereby excepted from the provisions of this Section.

Section 7(b). Satellite Antenna Systems. Direct, digital satellite dishes will be allowed under the following conditions:

(a) Satellite Dishes cannot exceed one (1) meter in diameter and must be mounted in such a manner as not to be visible from the street.

(b) Before installation of the satellite dish, the homeowner must submit a written request to the Declarant or its assigns or the NCC or ACC/MC for written approval. The request must contain the size of dish, plot plan of lot with location of satellite dish and proposed screening. Approval will be determined on each individual request basis and will be at the sole discretion of the Declarant and its assigns or the NCC or the ACC/MC.

Section 8. Basketball Equipment, Clotheslines, Garbage Cans, Tanks, Etc.

(a) No clothes lines, above-ground tanks or pools, and other similar items shall be placed, allowed or maintained upon any portion of the Properties, including any neighboring Units/Lots, streets, and property located adjacent to the Unit/Lot, except that garbage cans may be placed to curbside on days designated for trash pickup for that particular Unit/Lot. All rubbish, trash, and garbage shall be regularly removed from properties and shall not be allowed to accumulate thereon. Trash cans to be kept inside o screened from view at all other times.

(b) Permanent basketball hoops, backboards, and poles will be allowed under the following conditions: (1) the basketball hoops and/or backboards cannot be attached the residence and must be placed at the end of driveways and turnaround areas or rear yard as far away as feasibly possible from the adjacent home/Unit/Lot; and (2) the above-mentioned basketball equipment can only be used between the hours of 8:00 a.m. and 10:00 p.m.

Section 9. Subdivision of Unit/Lot. No Unit/Lot shall be sub-divided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Declarant, however, hereby expressly reserves the right to replat any Unit/Lot or Units/Lots owned by Declarant.

Section 10. Guns. The discharge of firearms within the Properties is prohibited. The term “firearms” shall include “B-B” guns and other firearms of all types.

Section 11. Swimming Pools. Swimming pools below ground level for the use of residence occupants and their guests only may be constructed on lots provided that: (1) the location, plans and specifications thereof are approved by the Declarant and its assigns or the NCC or the ACC/MC; (2) all applicable laws, ordinances, community standards of governmental agencies are complied with, and all necessary governmental permits are obtained; and (3) such construction is not commenced until after construction of the residence has begun. Should a residence become vacant, that is, not occupied for residential purposes for more than thirty (30) days, the owner shall see that the pool prevents health and safety hazards. Aboveground pools are prohibited on the Properties. All Units/Lots with underground pools shall be fenced in accordance with the provisions hereof.

Section 12. Tents, Trailers, Temporary Structures and Rear Lot Storage Buildings. Except as may be permitted by the NCC during initial construction within the Properties, no tent, utility, shed, shack, trailer, or other structure of a temporary nature shall be placed upon a Unit/Lot or any part of the properties. Rear lot storage buildings will not be allowed.

Section 13. Drainage and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No person other than Declarant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storms sewers, or storm drains. The Developer on behalf of the Association hereby reserves a perpetual easement across the Properties for the purpose of altering drainage and water flow. Septic systems are prohibited on the Properties.

Section 14. Tree Removal. Except as may be permitted by the NCC During initial construction within the Properties, no trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, and no trees may be added, unless approved in accordance with Article XI of this Declaration.

Section 15. Sight Distance at Intersections. All properties located at street intersections shall be landscaped to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 16. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the properties, except for temporary lines as required during construction and high voltage lines if required by law or for safety purposes.

Section 17. Air Conditioning Units/Lots. Except as may be permitted by the board or its designee, no window air conditioning Unit/Lot s may be installed in any Unit/Lot.

Section 18. Lighting. Except for seasonal decorative lights which may be installed and/or displayed only between November 28 and January 10, all exterior lights must be approved in accordance with Article XI of this Declaration.

Section 19. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the properties. Exterior sculpture, fountains, flagpoles, flags, and similar items must be approved in accordance with Article XI of this Declaration and shall be in compliance with the community standards.

Section 20. Mailboxes All mailboxes shall satisfy applicable postal regulations and shall conform to specifications established by the Declarant or the Architectural Review Committee.

Section 21. Energy Conservation Equipment No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article XI hereof.

Section 22. Leasing Units/Lots

(a) Definition. “Leasing” for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit/Lot by any person or persons other than the Owner for which the owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

(b) General. Units/Lots may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Units/Lots and assignments of leases unless prior written approval is obtained from the Board of Directors. No transient tenants may be accommodated in a Unit/Lot. All leases shall be in writing and shall be for an initial term of no less than six (6) months, except with the prior written consent of the Board of Directors. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit/Lot Owner within ten (10) days of execution of the lease. The owner must make available to the lessee copies of the Declaration, by-Laws, and the community standards.

(c) Compliance with Declaration, By-Laws and community standards. Every owner shall cause all occupants of his or her Unit/Lot to comply with the Declaration, By-Laws, and the community standards adopted pursuant thereto, and shall be responsible for all for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit/Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and community standards adopted pursuant thereto.

Section 23. Parks. Any park or other areas or equipment furnished by the Association or erected within the Properties, if any, shall be used at the risk of the user, and the Association shall not be held liable to any person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 24. Fences. Fences may be permitted as part of any pre-designed construction plan for Unit/Lot s and thereafter, as may be permitted by the ARC or “Developer” or their assigns in accordance with Article XI of the Declaration. No dog runs, animal pens shall be permitted. All fences shall be constructed of wrought iron or similar material (including black powder coated aluminum) in a style in conformity with the Community Standards, provided that fences may only be erected in rear yards and will not exceed four (4) feet in height. No chain link or similar type of fencing will be allowed. No fence shall be erected on any lot or building site closer to the street than the front corners of the house, and on corner lots, the front setback requirements on both streets shall apply. No fence will be permitted that is over or under six (6) feet in height. Fences will be allowed to property line on models only. All fence specifications and location must be submitted to “Developer” or their assigns for written approval or disapproval. Developer’s sole and absolute discretion shall govern.

Section 25. Wiring. No Unit/Lot Owner shall overload the electrical wiring in a Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others, or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior written consent of the Board or the prior written consent of the Managing Agent, given in accord with the Boards direction.

Section 26. Business Use. No trade or business may be conducted in or from any Unit/Lot, except that an Owner or occupant residing in a Unit/Lot may conduct business activities within the Unit/Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit/Lot; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meaning, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Unit/Lot in accordance with of this Article shall not be considered a trade or business within the meaning of this section.

Section 27. Playground Equipment. All playground equipment, including but not limited to, swing sets, slides, seesaws, playhouses, and/or climbing apparatuses, shall be maintained in good condition, constructed of natural wood, and finished with a natural wood exterior surface. No painted wood finish, predominately plastic or metal structures shall be allowed. Any allowable playground equipment must be hidden as much as possible from the street view and from the view of adjoining lot owners.

### **ARTICLE XIII** **GENERAL PROVISIONS**

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Unit/Lot, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may amend this Declaration so long as it has the unilateral right to annex owns property described in Exhibits “A”

and “B” to this Declaration for development as part of the Properties and so long as the amendment has no material adverse effect upon any right of any Owner; thereafter and otherwise, this Declaration may be amended only by the affirmative vote (in person or by alternate) or written consent, or any combination thereof, of Members representing one hundred (100%) percent of the total votes of the Association, and the written approval of the Class “B” Member so long as the Class “B” membership exists. So long as the Class “B” membership exists, any amendment to this Declaration shall also require the written consent of the U. S. Veterans Administration (“VA”) if the VA has guaranteed the Mortgage on any Unit/Lot. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Hamilton County, Tennessee.

If an owner consents to any amendment to this Declaration or By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonable incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers’ and directors’ liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit/Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Unit/Lot s due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary between each Unit/Lot and the adjacent portion of the Common Area or as between said adjacent Units/Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

Section 5. Easement for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibit “A”, the Association and the

designees of each (which may include, without limitation, Hamilton County, Tennessee, and any utility), blanket easements upon, across, over, and under all of the Common Area and, to the extent shown on any plat, over the Unit/Lot s for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, bicycle pathways, drainage systems, street lights, signage, and all utilities, including, but no limited to, water, sewers, meter boxes, telephones, gas, and electricity.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier easements across all Units/Lots on the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on said Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to Hamilton County, Tennessee, or any other local, state, or federal government entity, subject to such approval requirements as may be contained in Article XIV, Section 2 of this Declaration.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 7. Right on Entry. The Association shall not have the right to enter into any Unit/Lot for emergency, security, and safety, unless a legal document is obtained from the appropriate governmental agency or courts, which right may be exercised by all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in any emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Unit/Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 8. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or avoidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after death of the last survivor of the now living decedents of Elizabeth II, Queen of England.

Section 9. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of one hundred (100%) percent of the Members. This Section shall not apply, however, to 9a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article X hereof, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings institute against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 10. Use of the words “Cape Townhomes”. No person shall use the words “Cape Townhomes” or any derivative hereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the term, “Cape Townhomes” in printed or promotional matter where such term is used solely to specify that particular property is located within the Cape Townhomes community.

#### **ARTICLE XIV** **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first Mortgages on Units/Lots in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit/Lot number, therefore becoming an “eligible holder”), will be entitled to a timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit/Lot on which there is a first Mortgage hold, insured, or guaranteed by such eligible holder;

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Unit/Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit/Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action, which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or Members representing at least two-thirds (2/3) of the total Association vote entitled to be cast thereon consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit/Lot (A decision, including contracts, by the Board of provisions of any declaration subsequently recorded on any portion of

the Properties shall not be subject to this provisions where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural designs or the exterior appearance and maintenance of Unit/Lot s and of the Common Area (The issuance and amendment of architectural standards, procedures, community standards, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit/Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit/Lot.

Section 5. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements, which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Tennessee law for any of the acts set out in this Article.

Section 7. Failure of Mortgage to Respond. Any Mortgage who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgage within thirty (30) days of the date of the Association's request.

## **ARTICLE XV** **DECLARANT'S RIGHTS**

Section 1. Transfers. Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public



records of Hamilton County, Tennessee. Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Units/Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units/Lots, including, but not limited to, business offices, signs, model Units/Lots, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units/Lots owned by the Declarant and any clubhouse or community center, which may be owned by the Association, as models and sales offices, respectively.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

Section 2. Landscaping Buffers. Within the areas designated on the Preliminary Plan as the exterior boundary Landscape Buffers (if any), healthy trees larger than eight (8) inches in diameter at a distance of five (5) feet above the ground level shall not be cut or removed without the prior written consent of the Board of Directors of the Homeowners Association, except to the extent (a) install or maintain utilities; (b) ensure adequate drainage; or (c) allow construction of improvements within approved building sites adjacent to the Landscape Buffer. If trees are removed for any of the above three reasons, then, if feasible and desirable in the sole discretion of the Board of Directors, the tree buffer will be replaced within one hundred and eighty (180) days by the Homeowners Association and the expense thereof shall be a common expense of the Association.

In the event an eight-inch tree or larger is removed without the prior written consent of the Board of Directors, and for reasons other than items (a) through (c) above, then eight two-inch or large trees or four three-inch or larger trees, measured five feet above ground level, will be put back in the place of the tree removed within ninety days. Such replacement shall be the responsibility and cost of the owner of the Residential Unit/Lot on which that portion of the Landscape Buffer is situated or to which it is adjacent.

Trees under eight inches in diameter which are removed shall be replaced within ninety days by the owner of the Residential Unit/Lot on which the Landscape Buffer is situated.

The Board of Directors may determine, in its sole discretion, under what conditions and requirements trees may be removed and replaced, any may impose additional reasonable restrictions and requirements as it deems appropriate, in its sole discretion, in connection with the maintenance and preservation of the Landscape Buffers. In the event the owner of a Residential Unit/Lot is required, and fails, to replace trees or other vegetation, the Homeowner Association may do so, in which event it shall charge the amounts reasonable expended in this regard to said homeowner, which amount shall be paid as a part of the next monthly assessment, or may be spread over several months in the discretion of the Board of Directors, and, if not timely paid, shall become a lien against said Residential Unit/Lot and collected in the same fashion as delinquent assessments. The Homeowners Association, its Board of Directors, and their designees and agents, are hereby

granted the right of access across Residential Units/Lots and Landscape Buffers to the extent necessary to comply with and enforce the provisions of this section.

Section 3. The provisions regarding square footage of residences set forth in the Design Standards shall not be amended.

Section 4. These Restrictions shall apply to that property described in Exhibit A, attached hereto and incorporated herein by reference.

Section 5. Declarant shall choose the specific housing product to be constructed within the development.

This article may not be amended without express written consent of the Declarant. The rights contained in this article shall terminate only upon the recording by Declarant of a written statement that all sales activity has ceased, and that Declarant releases such rights by express reference thereto.

**ARTICLE XVI**  
**COMMON OPEN SPACE – ZONING ORDINANCE SECTION**

Any common open space (if any) established by an adopted final master development plan for planned Unit/Lot development shall be subject to the following:

(a) The Town of Soddy Daisy, Tennessee Planning Commission may require that the landowner provide for and establish and organization for the ownership and maintenance of any common open space, and such organization shall not be dissolved nor shall it dispose of any common open space, by sale or otherwise (except to an organization conceived and established to own and maintain the common open space), without first offering to dedicate the same to the Town of Soddy Daisy, Tennessee and the said dedication be approved by the the Town of Soddy Daisy, Tennessee Planning Commission. However, the conditions of any transfer shall conform to the adopted final master development plan.

(b) In the event that the organization established to own and maintain common open space, or any successor organization, shall at any time after the establishment of the planned Unit/Lot development fail to maintain the common open space in reasonable order and condition in accordance with the adopted master development plan, the zoning administrator may serve written notice upon such organization and/or the owners or residents of the planned Unit/Lot development and hold a public hearing. After thirty (30) days when deficiencies of maintenance are not corrected, the zoning administrator shall call upon any public or private agency to maintain the common open space for a period of one year. When the zoning administrator determines that the organization is not prepared for the maintenance for the common open space, such agency shall continue maintenance for yearly periods.

(c) The cost of such maintenance by such agency shall be assessed proportionally, against the properties within the planned Unit/Lot development that have a right of enjoyment of the common open space, and shall become a lien on said properties.

**[SIGNATURE(S) ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration  
this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

OWNER/DEVELOPER:  
CAPE TOWNHOMES, LLC,  
a Tennessee Limited Liability Company

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_ with whom I am personally acquainted, and who, upon oath, acknowledged himself or herself to be \_\_\_\_\_ of CAPE TOWNHOMES, LLC, a Tennessee Limited Liability Company, and as such person being so authorized to do, executed the foregoing instrument for the purpose herein contained, by signing the name of the limited liability company by himself or herself as the authorized agent.

WITNESS my hand and seal, at office in the aforesaid state and county this \_\_\_\_\_  
day of \_\_\_\_\_, 2021.

*SEAL*

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**(Legal Description)**

**EXHIBIT "B"**  
**(Corporate Charter)**

**CHARTER**  
**OF**  
**CAPE TOWNHOMES HOMEOWNERS ASSOCIATION INC.**

The undersigned, acting as the incorporator(s) of a corporation under the Tennessee Nonprofit Corporation Act, adopt(s) the following Charter for such corporation:

1. The name of the corporation is Cape TOWNHOMES Homeowners association Inc.

2. This corporation is a mutual benefit corporation.

3. The street address of the initial registered office of the corporation is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ County, Tennessee \_\_\_\_\_, and the initial registered agent for the corporation at that office is \_\_\_\_\_.

4. The name and address of the [*each*] incorporator is:

|                         |                         |
|-------------------------|-------------------------|
| (name)                  | (name)                  |
| (address)               | (address)               |
| (city, state, zip code) | (city, state, zip code) |

5. The street address of the principal office of the corporation is \_\_\_\_\_, \_\_\_\_\_, Tennessee \_\_\_\_\_.

6. The corporation is not for profit.

7. The corporation shall have members. The members of the corporation shall be the owners of condominium Unit/Lot s of Cape Townhomes Upon the conveyance or transfer of the ownership interest in a Unit/Lot of the condominium, the new owner or owners shall succeed to the former Unit/Lot owners or owners membership, and the membership of the former Unit/Lot owner or owners shall terminate.

8. To the extent allowed by the laws of the State of Tennessee, no present or future director of the corporation (or his or her estate, heirs and personal representatives) shall be liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director of the corporation. Any liability of a director (or his or her estate, heirs and personal representatives) shall be further eliminated or limited to the fullest extent allowed by the laws of the State of Tennessee, as may hereafter be adopted or amended.

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

10. The purposes for which the corporation is organized are: to operate a condominium management association solely to provide for the acquisition, construction, management, maintenance and care of association property; and generally to engage in any other lawful endeavor or activity in furtherance of the foregoing, so long as such endeavor or activity does not prevent the corporation from being, or maintaining its status as, a homeowners association as defined by Section 528(c)(1) of the Internal Revenue Code of 1986, or corresponding section of any future federal income tax code.

11. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its directors, officers, members or other private individuals or persons, except that the corporation shall be authorized and empowered to:

- (a) pay reasonable compensation for goods and services rendered,
- (b) rebate excess membership dues, fees or assessments, and
- (c) make payments in furtherance of the purposes set forth in the paragraph just above.

**EXHIBIT “C”  
(Bylaws)**

**BYLAWS  
OF  
CAPE TOWNHOMES HOMEOWNERS ASSOCIATION INC.**

ARTICLE I -- Members (Unit/Lot /Lot Owners)

*Section 1. Eligibility.* The members of the CAPE TOWNHOMES HOMEOWNERS ASSOCIATION INC., a Tennessee nonprofit corporation (the Association), shall consist of the respective Unit/Lot Owners of the CAPE TOWNHOMES HOMEOWNERS ASSOCIATION INC. (the Property), in accordance with the respective percentages of ownership interest in the Common Elements of the Property owned by the respective Unit/Lot /Lot Owners. These and other terms are used in these Bylaws as they are defined in the Declaration Of Covenants, Conditions and Restrictions for CAPE TOWNHOMES HOMEOWNERS ASSOCIATION INC. The words member or members as used in these Bylaws mean and shall refer to Unit/Lot Owner or Unit/Lot Owners, as the case may be, as defined in the Declaration. If a Unit/Lot Owner is a land title holding trust under the terms of which all powers of management, operation and control of the Unit/Lot remain vested in the trust beneficiary, then the member shall be said beneficiary of such trust.

*Section 2. Succession.* The membership of each Unit/Lot Owner shall terminate when such Owner ceases to be a Unit/Lot Owner, and upon the sale, transfer or other disposition of such Owners ownership interest in the Property, such Owners membership in the Association shall automatically be transferred to the new Unit/Lot Owner succeeding to such ownership interest.

*Section 3. Annual Meetings.* The annual meeting of Unit/Lot Owners shall be held at the time and place specified in the notice of such meeting, but such place shall be within five (5) miles of the Property. The annual meeting of Unit/Lot /Lot Owners shall be held on the sixtieth (60th) day following the end of the Associations fiscal year of each and every year, if not a legal holiday, and if a legal holiday, then on the next succeeding business day not a legal holiday. At the annual meeting, the Unit/Lot Owners shall elect Directors, receive reports on the activities and financial condition of the Corporation, and transact such other business as may properly come before the meeting.

*Section 4. Special Meetings.* The Association shall hold a special meeting of its Unit/Lot Owners upon the call of the Board of Directors or the President, or upon the written demand(s) to the Secretary by Unit/Lot Owners holding at least ten (10%) percent of all votes entitled to be cast on any issue to be considered at the proposed special meeting. Any call or demand for a special meeting shall describe the purpose(s) for which the special meeting is to be held. Only business within the purpose(s) described in the meeting notice for the special meeting may be conducted at such meeting.

*Section 5. Notice of Meetings.* The Association shall notify its Unit/Lot Owners of the date, time and place of each annual and special meeting of Unit/Lot Owners no fewer than ten (10), nor more than forty-five (45), days before the meeting date. The notice of a meeting shall also contain such other information which may be required by these Bylaws.

*Section 6. Waiver of Notice.* A Unit/Lot Owners attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting unless the Unit/Lot Owner at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose(s) described in the meeting notice, unless the Unit/Lot Owner objects to considering the matter when it is presented.

*Section 7. Voting.* The aggregate number of votes of all Unit/Lot Owners shall be equal to the total of all Units/Lots which are subject to the Declaration, and shall be divided among the respective Unit/Lot Owners with one (1) vote allocated to each Unit/Lot. If any Unit/Lot Owner consists of more than one (1) person, the voting rights of such Unit/Lot Owner shall not be divided but shall be exercised as if the Unit/Lot Owner consisted of only one (1) person in accordance with the proxy or other designation made by the persons constituting such Unit/Lot Owner. A majority of the Unit/Lot Owners means the owners of more than fifty percent (50%) of the voting rights of the Unit/Lot Owners.

The Developer may exercise the voting rights with respect to Units/Lots owned by Developer; however, the Developer shall transfer control of the Association to the other Unit/Lot Owners no later than the earlier of:

(a) the time at which a majority of the Unit/Lots in the project have been conveyed to other Unit/Lot Owners four (4) months after seventy-five (75%) percent of the Unit/Lots in the project have been conveyed to Unit/Lot purchasers; or

(b) ten (10) years after the first Unit/Lot is sold.

If control must be transferred because of the occurrence of (a) or (b) just above, the Developers number of votes for Units/Lots owned shall be appropriately reduced so that control of the Association is effectively transferred.

Notwithstanding the foregoing, no Unit/Lot Owner who is in default in the payment of assessments hereunder shall be entitled to exercise the right to vote until the Owner has cured such default. A Unit/Lot Owner shall be deemed to be in default if such Owner has not paid his or her assessments to the Board, or their agent, within ten (10) days after the date such assessments are due. A Unit/Lot Owner may protest the amount of the assessment, but it still must be paid during the pendency of the protest to the Board.

*Section 8. Quorum.* Unless otherwise required by law, a majority of the votes entitled to be cast by Unit/Lot Owners must be represented at any meeting of the Unit/Lot Owners to constitute a quorum on that matter. If, however, such quorum is not represented at any such meeting, the Unit/Lot Owners present at the meeting in person or represented by proxy shall have the power to adjourn from time to time without notice other than announcement at the meeting, until the requisite quorum is present or represented, when any business may be transacted which might have been transacted at the meeting as provided in the original notice.

*Section 9. Voting Requirements.* Except as otherwise provided in these Bylaws or the Declaration, action on any matter voted upon at a meeting of the Unit/Lot Owners is approved if a majority of the Unit/Lot Owners vote in favor of the action. However, Directors shall be elected



by a plurality of the votes cast by the Unit/Lot Owners entitled to vote in the election at a meeting of the Unit/Lot Owners at which a quorum is present

*Section 10. Action by Written Consent.* Action that is required or permitted to be taken at a meeting of the Unit/Lot Owners may be taken without such a meeting if all Unit/Lot Owners entitled to vote on the action consent to taking such action without a meeting. If all of such Unit/Lot Owners so consent, the affirmative vote of the number of votes that would be necessary to authorize or take such action at a meeting shall be the act of the Unit/Lot Owners, except as otherwise provided in these Bylaws. Such consent (or counterpart(s) thereof) shall describe the action taken, be in writing, be signed by each Unit/Lot Owner entitled to vote on the action, indicate each signing Unit/Lot Owners vote or abstention on the action, and be delivered to the Secretary of the Association and included in the minutes or Association records.

*Section 11. Action by Written Ballot.* Any action that may be taken at any annual or special meeting of Unit/Lot Owners may be taken without a meeting if the Association delivers a written ballot to every Unit/Lot Owner entitled to vote on the matter. The written ballot shall set forth each proposed action and shall provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall:

- (a) Indicate the number of responses needed to meet the quorum requirements;
- (b) State the percentage of approvals necessary to approve each matter other than election of Directors; and
- (c) Specify the time by which the ballot must be received by the Association in order to be counted.

## *ARTICLE II*

### *Board of Directors*

*Section 1. Number, Election and Term of Office.* The Board of Directors of the Association shall consist of five (5) persons (hereinafter referred to as Directors). Directors shall be elected at the annual meeting of Associations Unit/Lot Owners by the vote of Unit/Lot Owners as hereinafter provided, except that the Developer shall appoint the interim Board of Directors (Interim Board) until the first meeting. At the first meeting, the Unit/Lot Owners shall, among other business, elect four (4) members of the first Board of Directors (First Board) and the deed of trust beneficiary holding the largest number of deeds of trust on Units/Lots shall be entitled to appoint one person to be a Board member. Those candidates for election as Director receiving the greatest number of votes cast either in person, or by proxy, at the meeting shall be elected. Directors, except for members of the First Board, Interim Board, and the member appointed by the deed of trust beneficiary shall hold office for the term of two (2) years and until his or her successor shall be elected and qualified. Two (2) members of the First Board shall hold office until the second annual meeting of the Associations Unit/Lot Owners, one (1) member of the First Board shall hold office until the third annual meeting of the Associations Unit/Lot Owners, and one (1) member of the First Board shall hold office until the fourth annual meeting of Associations Unit/Lot Owners. The member of the Board appointed by the deed of trust beneficiary shall hold office at the pleasure of such beneficiary.

*Section 2. Qualification.* Except for those persons making up the Interim Board, and the Director appointed by the deed of trust beneficiary, each Director shall be a Unit/Lot Owner or the spouse of a Unit/Lot Owner (or, if a Unit/Lot Owner is a trustee of a trust, a Director may be a beneficiary of such trust, and if a Unit/Lot Owner or such a beneficiary is a corporation or partnership, a Director may be an officer, partner or employee of such Unit/Lot Owner or beneficiary). If a Director shall cease to meet such qualifications during his term, such Director shall cease to be a Director and his or her place on the Board shall be deemed vacant.

*Section 3. Regular Meetings.* Except as otherwise provided herein, regular meetings of the Board of Directors may be held without notice at such time and place as the Board of Directors shall determine from time to time, but no less frequently than once a year.

*Section 4. Special Meetings.* Special meetings of the Board of Directors may be called by the President or by any two (2) Directors.

*Section 5. Notice of Meetings.* Except as otherwise provided herein, regular meetings of the Board of Directors may be held without notice of the date, time, place, or purpose of the meeting. Except as otherwise provided herein, special meetings of the Board of Directors must be preceded by at least two (2) days notice to each Director of the date, time and place, but not the purpose, of such special meeting. Notice of any adjourned meeting need not be given if the time and place to which the meeting is adjourned are fixed at the meeting at which the adjournment is taken, and if the period of adjournment does not exceed one (1) month in any one (1) adjournment.

*Section 6. Waiver of Notice.* If a Director attends or participates in a meeting, he or she waives any required notice to him or her of the meeting unless the Director at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

*Section 7. Quorum and Voting.* A quorum of the Board of Directors consists of a majority (but no fewer than two (2)) of the Directors then in office before a meeting begins. If a quorum is present when a vote is taken, the affirmative vote of a majority of the Directors present is the act of the Board of Directors, except as otherwise provided in these Bylaws.

*Section 8. Vacancy.* If a vacancy occurs on the Board of Directors, including a vacancy resulting from an increase in the number of Directors or a vacancy resulting from a removal of a Director with or without cause:

- (a) The Unit/Lot Owners may fill the vacancy;
- (b) The Board of Directors may fill the vacancy; or
- (c) If the Directors remaining in office constitute fewer than a quorum of the Board, they may fill the vacancy by the affirmative vote of a majority of all Directors remaining in office.

Any Director elected to fill a vacancy shall hold office for a term equal to the unexpired term of the Director succeeded. Notwithstanding the other provisions of this Section, in the event the deed of trust beneficiary holding the largest number of deeds of trust on Units/Lots chooses not to appoint a Director, it shall be the Board which shall by majority vote of the remaining Directors fill such vacancy, but only for a term of one (1) year at a time.

*Section 9. Removal of Directors.* The Unit/Lot Owners may remove any one (1) or more Directors, with or without cause, at any special meeting that is specifically called for that purpose.

*Section 10. Action Without Meeting.* Action that is required or permitted to be taken at a meeting of the Board of Directors may be taken without such a meeting if all Directors consent to taking such action without a meeting. If all Directors so consent, the affirmative vote of the number of Directors that would be necessary to authorize or take such action at a meeting shall be the act of the Board, except as otherwise provided in these Bylaws. Such consent(s) shall describe the action taken, be in writing, be signed by each Director entitled to vote, indicate each signing Directors vote or abstention on the action, and be delivered to the Secretary of the Association and included in the minutes filed with the Associations records.

*Section 11. Indemnification.* With respect to claims or liabilities arising out of service as a Director of the Association, the Association shall indemnify and advance expenses to each present and future Director (and his or her estate, heirs, and personal representatives) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

*Section 12. Immunity.* To the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended, each present and future Director (and his or her estate, heirs, and personal representatives) shall be immune from suit arising from the conduct of the affairs of the Association.

*Section 13. Compensation.* Directors shall receive no compensation for their services as Directors, unless expressly provided for in resolutions duly adopted by the Unit/Lot Owners.

*Section 14. Powers and Duties.* The Board shall have the following powers and duties:

- (a) to elect and remove the officers of the Association as hereinafter provided;
- (b) to administer the affairs of the Association and the Property;
- (c) to engage the services of an agent (hereinafter sometimes called the Managing Agent) to maintain, repair, replace, administer and operate the Property or any part thereof for all of the Unit/Lot Owners, upon such terms and for such compensation and with such authority as the Board may approve; provided, however, that the First Board, appointed as provided herein, shall ratify and approve the Management Agreement between the Developer, on behalf of the Association, and a management corporation, to act as Managing Agent for the Property for a term as approved by said First Board, but not to exceed one (1) year, and in accordance with the Declaraton; provided further, that the Board shall not have the authority to adopt any form of management of the Property which excludes professional management by an independent agent;
- (d) to formulate policies for the administration, management and operation of the Property and the Common Elements thereof;
- (e) to adopt rules and regulations, with written notice thereof to all Unit/Lot Owners, governing the administration, management, operation and use of the Property and the Common Elements, and to amend such rules and regulations from time to time;

(f) to provide for the maintenance, repair, and replacement of the Common Elements and payments therefor, and to approve payment vouchers or to delegate such approval to the officers or the Managing Agent;

(g) to provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Property and the Common Elements, and to delegate any such powers to the Managing Agent;

(h) to appoint committees of the Board and to delegate to such committees the Board's authority to carry out certain duties of the Board;

(i) to determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deems advisable, but only as allowed by law;

(j) to estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Unit/Lot Owners their respective shares of such estimated expenses, as hereinafter provided;

(k) unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of the Unit/Lot Owners (as said majority is defined in Section 1(j) of the Declaration), as expressed in a resolution duly adopted at any annual or special meeting of the Unit/Lot Owners;

(l) to resolve or mediate disputes, conflicts or problems between Unit/Lot Owners;

(m) when necessary, to interpret the rules and regulations of the Association and the Declaration;

(n) to exercise all other powers and duties of the Board of Directors referred to in the Declaration or these Bylaws.

*Section 15. Non-Delegation.* Nothing in this Article or elsewhere in these Bylaws shall be considered to grant to the Board, the Association or to the officers of the Association any powers or duties which, by law, have been delegated to the Unit/Lot Owners.

## ARTICLE III-- Officers

*Section 1. Designation.* At each regular meeting, the Directors present at said meeting shall elect the following officers of the Association by a majority vote, provided a quorum exists:

(a) a President, who shall be a Director and who shall preside over the meetings of the Board and of the Unit/Lot Owners, and who shall be the chief executive officer of the Association;

(b) a Secretary, who shall keep the minutes of all meetings of the Board and of the Unit/Lot Owners, and who shall, in general, perform all the duties incident to the office of Secretary, and who may be a representative of the Managing Agent;

(c) a Treasurer, who shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported; and

(d) such additional officers as the Board shall see fit to elect.

*Section 2. Powers.* The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit.

*Section 3. Term of Office.* Each officer shall hold office for the term of one (1) year and until a successor shall have been appointed or elected and qualified.

*Section 4. Vacancies.* Vacancies in any office shall be filled by the Board by a majority vote of the remaining Directors at a special meeting of said Board. Any Director so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer succeeded.

*Section 5. Compensation.* The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by the Unit/Lot Owners.

*Section 6. Removal.* The Board of Directors may remove any officer at any time with or without cause.

*Section 7. Indemnification.* With respect to claims or liabilities arising out of service as an officer of the Association, the Association shall indemnify and advance expenses to each present and future officer (and his or her estate, heirs and personal representatives) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

## ARTICLE IV-- Assessments

*Section 1. Annual Budget.* The Board shall cause to be prepared an estimated annual budget for each fiscal year of the Association. Such budget shall take into account the estimated common expenses and cash requirements for the year, including but not limited to salaries, wages, payroll taxes, legal and accounting fees, working capital fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, and all other common expenses. To the extent that the assessments and other cash income collected from the Unit/Lot Owners during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account. The annual budget shall also take into account any estimated net available cash income for the year from the lease,

operation or use of the Common Elements. The annual budget shall provide for a reserve for contingencies for the year and a reserve for replacements, in reasonable amounts as determined by the Board.

*Section 2. Assessments.* The estimated annual budget for each fiscal year shall be approved by the Board, and copies thereof shall be furnished by the Board to each Unit/Lot Owner, not later than thirty (30) days prior to the beginning of such year. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Unit/Lot Owner shall pay, as such Owners respective monthly assessment for the common expenses, one-twelfth (1/12) of such Owners proportionate share of the common expenses for such year as shown by the annual budget. Such proportionate share for each Unit/Lot Owner shall be in accordance with such Owners respective ownership interest in the Common Elements as set forth in the Declaration. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new monthly assessments for any year, or shall be delayed in doing so, each Unit/Lot Owner shall continue to pay each month the amount of such Owners respective monthly assessment as last determined. Each Unit/Lot Owner shall pay such Owners monthly assessment on or before the first day of each month to the Managing Agent or as may be otherwise directed by the Board. No Unit/Lot Owner shall be relieved of the obligation to pay such Owners assessment by abandoning or not using such Owners, the Common Elements, or the Limited Common Elements.

*Section 3. Partial Year or Month.* For the first fiscal year and thereafter until the First Board is elected, the annual budget shall be approved by the Interim Board. If such first fiscal year, or any succeeding fiscal year, shall be less than a full year, then the monthly assessments for each Unit/Lot Owner shall be proportionate to the number of months and days in such period covered by such budget. Each Unit/Lot Owner shall pay such Owners assessment for the following month or fraction of a month, which assessment shall be in proportion to the Owners respective ownership interest in the Common Elements and the number of months and days remaining of the period covered by the current annual budget, and which assessment shall be computed by the Board.

*Section 4. Annual Report.* Within ninety (90) days after the end of each fiscal year covered by an annual budget, or as soon thereafter as shall be practicable, the Board shall cause to be furnished to each Unit/Lot Owner, and to any other party required by the Declaration, a statement for such year so ended, showing the receipts and expenditures and such other information as the Board may deem desirable.

*Section 5. Supplemental Budget.* In the event that during the course of any year, it shall appear to the Board that the monthly assessments, determined in accordance with the estimated common expenses and limited common expenses for the remainder of such year will be inadequate, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit/Lot Owner, and thereupon a supplemental assessment shall be made to each Unit/Lot Owner for such Owners proportionate share of such supplemental budget.

*Section 6. Expenditures.* Except for the Management Agreement described in Article II, Section 14(c) hereof and expenditures and contracts specifically authorized by the Declaration and Bylaws, the Board shall not approve any expenditure in excess of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_) unless required for emergency repair, protection or operation of the Common Elements or Limited Common Elements, nor enter any contract for more than three (3) years without the prior approval of three-fifths (3/5) of the votes of the Unit/Lot Owners.

*Section 7. Lien.* It shall be the duty of every Unit/Lot Owner to pay such Owners proportionate share of the common expenses and limited common expenses, as provided in the Declaration, and as assessed in the manner herein provided.

If any Unit/Lot Owner shall fail or refuse to make any such payment of the common expenses or limited common expenses when due, the amount thereof, together with interest thereon at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) *per annum* after said common expenses become due and payable, shall constitute a lien, enforceable by the Board, on the interest of such Unit/Lot Owner in the Property, provided, however, that such lien shall be subordinate to the lien of a recorded deed of trust on the interest of such Unit/Lot Owner, except for the amount of the proportionate share of common expenses and limited common expenses which are due and payable from and after the date on which such deed of trust beneficiary either takes possession of the Unit/Lot, accepts a conveyance of any interest therein (other than as security), or files suit to foreclose on its deed of trust. The provisions of this paragraph of this Section 7 shall not be amended, changed, modified or rescinded in any way without the prior written consent of all such lien holders of record.

The Association or its successors and assigns, and the Board or its agents, shall have the right to enforce the lien as provided in the Declaration, and there shall be added to the amount due the costs of any suit maintained to enforce the lien and other fees and expenses, together with legal interest and reasonable attorney's fees. Furthermore, if any Unit/Lot Owner shall fail or refuse to pay when due such Owners proportionate share of the common expenses or limited common expenses and such Unit/Lot Owner withholds possession of such Owners Unit/Lot after demand by the Board or the Association in writing setting forth the amount claimed, the Board or the Association shall have the right to possession of such Unit/Lot. The Board or the Association shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Declaration or these Bylaws, or as are otherwise available at law or in equity, for the collection of all unpaid assessments.

*Section 8. Records and Statement of Account.* The Board shall cause to be kept detailed and accurate records in a book in chronological order of the receipts and expenditures affecting the Common Elements and Limited Common Elements, specifying and itemizing the common expenses and limited common expenses incurred. Payment vouchers may be approved in such manner as the Board may determine. Said book and the vouchers shall be available for examination by all Unit/Lot Owners at convenient hours on working days which shall be set and announced for general knowledge.

The Board shall, upon receipt of ten (10) days written notice to it or the Association and upon payment of a reasonable fee, furnish to any Unit/Lot Owner a statement of account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit/Lot Owner.

*Section 9. Discharge of Liens.* The Board may cause the Association to discharge any mechanics lien or other encumbrance that in the opinion of the Board may constitute a lien against the Property or the Common Elements, rather than a lien against only a particular Unit/Lot ownership. When fewer than all the Unit/Lot Owners are responsible for the existence of any such lien, the Unit/Lot Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorney's fees, incurred by reason of such lien.

*Section 10. Holding of Funds.* All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit/Lot Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit/Lot Owners.

*Section 11. Association Records.* The Association shall keep as permanent records minutes of all meetings of its Unit/Lot Owners and Board of Directors, a record of all actions taken by the Unit/Lot Owners and the Board of Directors without a meeting and all appropriate accounting records.

*Section 12. Records at Principal Office.* The Association shall keep at all times a copy of the following records at its principal office:

- (a) Its Charter or Restated Charter and all amendments thereto;
- (b) These Bylaws and all amendments thereto;
- (c) Resolutions adopted by the Board of Directors relating to the characteristics, qualifications, rights, limitations and obligations of Unit/Lot Owners or any class or category of Unit/Lot Owners;
- (d) The minutes of all meetings of Unit/Lot Owners and the records of all actions taken by Unit/Lot Owners without a meeting for the past three (3) years;
- (e) All written communications to Unit/Lot Owners generally within the past three (3) years, including the past three (3) years' annual financial statements;
- (f) A list of the names and business or home addresses of its current Directors and officers;
- (g) The most recent annual report delivered to the Tennessee Secretary of State; and
- (h) The Declaration and all amendments thereto.

*Section 13. Annual Financial Statements.* The Association shall prepare annual financial statements that include a balance sheet as of the end of the fiscal year, an income statement for that year, and such other information necessary to comply with the requirements of the applicable provisions of the Tennessee Nonprofit Corporation Act.

#### ARTICLE VI-- Contractual Powers

No contract or other transaction between the Association and one or more of its Directors or between the Association and any corporation, firm or association in which one or more of the Directors of the Association are directors, or are financially interested, is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

- (a) the fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes and the Board or committee authorizes, approves



or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Director or Directors; or

(b) the contract or transaction is just and reasonable as to the corporation at the time it is authorized or approved.

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction.

#### ARTICLE VII-- Amendments

These Bylaws may be amended or modified from time to time by action or approval of two-thirds (2/3) of the Unit/Lot Owners casting one (1) vote for each Unit/Lot owned, as provided in Article I, Section 7 of these Bylaws. Such amendment(s) shall not be operative until they are recorded in the office of the Register of Deeds for Hamilton County, Tennessee. These Bylaws may not be amended by the Board of Directors.

#### ARTICLE VIII-- Deeds of Trust

*Section 1. Notice to Board.* A Unit/Lot Owner who mortgages his Unit/Lot shall notify the Board of the name and address of the deed of trust beneficiary and shall file a copy of the note and deed of trust with the Board. The Board shall maintain such information in a book entitled Deeds of Trust on Units/Lots.

*Section 2. Notice of Unpaid Common Charges.* The Board, whenever so requested in writing by a deed of trust beneficiary of a Unit/Lot, shall promptly report any then unpaid assessments, fees or common charges due from, or any default by, the Owner of the mortgaged Unit/Lot.

*Section 3. Notice of Default.* The Board, when giving notice to a Unit/Lot Owner of a default in paying common charges or other default, shall send a copy of such notice to each deed of trust beneficiary of record covering such Unit/Lot whose name and address has theretofore been furnished to the Board and which has requested in writing to be sent a copy of such notice(s).

*Section 4. Examination of Books.* Each Unit/Lot Owner, and others as specified in the Declaration, shall be permitted to examine the books and records of the Association, current copies of the Declaration and Bylaws, and rules and regulations of the Association during normal business hours and upon request.

*Section 5. Interest of Valid First Lien Deed of Trust.* The interest of a valid first lien deed of trust shall be superior to the interest of the Board in the event of a default, and nothing in this instrument shall be construed to the contrary. If the first lien deed of trust has incorporated the terms of these Bylaws, the Declaration and the contract in its deed of trust, then said first lien deed of trust may at its option declare a default in its deed of trust by reason of any default hereunder, and may proceed to enforce its rights according to the terms of the deed of trust, notwithstanding any enforcement instituted by the Board.

## ARTICLE IX-- Definition of Terms

The terms used in these Bylaws, to the extent they are defined herein, shall have the same definition as set forth in the Declaration, as such may be amended from time to time, which Declaration is recorded in the office of the Register for Deeds of Hamilton County, Tennessee.

The term member, as used in these Bylaws, generally means Unit/Lot Owner as defined in the Declaration, Deed of trust, as used herein, includes a mortgage; and deed of trust beneficiary includes a mortgagee and a holder of a deed of trust.

## ARTICLE X-- Miscellaneous Provisions

*Section 1. No Seal.* The Association shall have no seal.

*Section 2. Notices.* Whenever notice is required to be given to Unit/Lot Owners, Directors or officers, unless otherwise provided by law, the Declaration, the Charter or these Bylaws, such notice may be given in person or by telephone, telegraph, mail, email or private carrier. If such notice is given by mail, it shall be sent postage prepaid by first class United States mail or by registered or certified United States mail, return receipt requested, and addressed to the respective address which appears for each such person on the books of the Corporation. Written notice sent by mail to Unit/Lot Owners shall be deemed to have been given when it is mailed. Any other written notice shall be deemed to have been given at the earliest of the following:

- (a) When received;
- (b) Five (5) days after its deposit in the United States mail if sent first class, postage prepaid; or
- (c) On the date on the return receipt, if sent by registered or certified United States mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

*Section 3. Waiver of Notice.* Whenever any notice is required to be given under the provisions of any statute, or of the Declaration, the Charter or these Bylaws, a waiver thereof in writing signed by the person entitled to such notice, whether before or after the date stated thereon, and delivered to the Secretary of the Association and included in the minutes or corporate records, shall be deemed equivalent thereto.

*Section 4. Negotiable Instruments.* All checks, drafts, notes or other obligations of the Association shall be signed by such of the officers of the Association or by such other person(s), as may be authorized by the Board of Directors.

*Section 5. Deposits.* The monies of the Association may be deposited in the name of the Association in such bank(s) or financial institution(s) as the Board of Directors shall designate from time to time and shall be drawn out by check signed by the officer(s) or person(s) designated by resolution adopted by the Board of Directors.

*Section 6. Committee Members.* With respect to claims or liabilities arising out of service as a member of a committee duly appointed by the Board of Directors of the Association, the Association shall indemnify and advance expenses to each such present and future committee member (and his or her estate, heirs and personal representatives) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

*Section 7. Developer.* With respect to claims or liabilities arising out of service as an agent of the Association, the Association shall indemnify and advance expenses to the Developer (its officers, employees and successors) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect or as hereafter adopted or amended.

#### ARTICLE XI-- Conflicts

These Bylaws are set forth to comply with the requirements of Tennessee law as it may be amended from time to time, and to allow the Bylaws to control in specific situations where such law allows. In case any of the Bylaws conflict with the provisions of said statute or of the Declaration, the provisions of law or of the Declaration, as the case may be, shall control.