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**MASTER DEED**  
**OF**  
**COLLIER PLACE AT MULBERRY PARK**  
**A HORIZONTAL PROPERTY REGIME**

2005

THIS INSTRUMENT PREPARED BY  
AND RETURN TO:  
HON AND KOPET, ATTORNEYS  
617 Walnut Street  
Chattanooga, TN 37402

GM

**MASTER DEED  
OF  
COLLIER PLACE AT MULBERRY PARK  
A HORIZONTAL PROPERTY REGIME**

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**TABLE OF EXHIBITS**

<b>Exhibit "A"</b>	Legal Description of the Property
<b>Exhibit "B"</b>	Plat of Collier Place at Mulberry Park and Description of Units, Schedule of Unit Square Footage, and Percentage Interest in the Common Elements
<b>Exhibit "C"</b>	Floor Plans for Each Unit Type
<b>Exhibit "D"</b>	Charter of Collier Place Condominium Owners' Association, Inc.
<b>Exhibit "E"</b>	Bylaws of Collier Place Condominium Owners' Association, Inc.

OF  
COLLIER PLACE AT MULBERRY PARK  
A HORIZONTAL PROPERTY REGIME

THIS MASTER DEED is made by Realty Innovations, LLC, a Tennessee limited liability company, (hereinafter called the "Declarant"), having its principal place of business located at 633 Chestnut Street, Suite 840, Chattanooga, TN 37450.

**WITNESSETH:**

WHEREAS, the Declarant is the owner of certain real property located in Hamilton County, Tennessee, and described on **Exhibit "A"** attached hereto, upon which Declarant has constructed and/or is in the process of constructing certain buildings, structures, improvements and other permanent fixtures, together with all rights and privileges belonging or in any way appertaining thereto.

WHEREAS, the Declarant hereby submits the above described parcel of real estate together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon and to be constructed thereon, and all rights and privileges belonging or in any way pertaining thereto, to the provisions of the Horizontal Property Act of the State of Tennessee for the express purpose of establishing thereon a horizontal property regime, to be known as **COLLIER PLACE AT MULBERRY PARK**; and

WHEREAS, Declarant anticipates that the Units shown on the current Plat attached hereto as **Exhibit "B"** shall constitute Phases 2, 3, 4, 5, 6, 9, 16, and the Clubhouse of the horizontal property regime hereby created and that additional Units shall be built approximately at the locations identified as "Future Units" on **Exhibit "B"**. Accordingly, Declarant desires to reserve the right to expand the horizontal property regime hereby created and to include additional Phases and Additional Land (as hereinafter defined) either shown as Future Units or not shown on **Exhibit "B"** to the end that there is but one horizontal property regime consisting of all Phases now or hereafter submitted, all as more particularly set forth herein; and

WHEREAS, the Declarant desires to establish said horizontal property regime for its own benefit and for the mutual benefit of all future owners or occupants of the Condominium Property (as hereinafter defined), including additional Phases, or any part thereof, and intends that all future owners, occupants, deed of trust beneficiaries, and any other persons hereinafter acquiring any interest in the Condominium Property, shall hold such interest subject to certain rights, easements and privileges in, over and upon the Condominium Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof, as hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspects of residence on the Condominium Property, and are established for the purpose of enhancing the value, desirability and attractiveness of the Condominium Property.

WHEREAS, the Condominium Property is also subject to the covenants, restrictions, easements, affirmative obligations, charges and liens set forth in the Declaration of Covenants, Conditions and Restrictions for Mulberry Park, recorded in Book 7662, Page 187, in the Register's Office of Hamilton County, Tennessee, subject to the provisions contained herein.

NOW, THEREFORE, Declarant does hereby publish and declare that all of the Condominium Property is herewith submitted to a horizontal property regime pursuant to the Act, and from this date, the Condominium Property shall be held, converted, hypothecated, encumbered, leased, used, occupied, and improved subject solely to the provisions of the Act and the following covenants, conditions, restrictions, uses, limitations and obligations contained herein, and the Charter, Bylaws, Plat and other exhibits attached hereto and made a part hereof, all of which are declared and agreed to be covenants both running with and burdening the Condominium Property, binding upon and benefiting Declarant, its successors and assigns, and any present or future Unit Owner (as hereinafter defined) of all or any interest in the Condominium Property and their respective grantees, successors, heirs, executors, administrators and other personal representatives, devisees and assigns; subject to Declarant's right to release and withdraw portions of the Condominium Property from the regime created hereunder, as permitted by the terms and conditions of this Master Deed. This Master Deed shall also constitute the "declaration" referred to under the Act.

Declarant does hereby further declare as follows:

#### ARTICLE 1: DEFINITIONS

As used herein, unless the context otherwise requires:

- (a) **"Additional Land"** means real property that may hereafter be added to Collier Place at Mulberry Park and upon which additional Units and Common Elements may be created subsequent to the submission of the Condominium Property to the Act.
- (b) **"Act"** means the Horizontal Property Act of the State of Tennessee, Section 66-27-101, et seq., Tenn. Code Ann., as amended.
- (c) **"Condominium Association"** means Collier Place Condominium Owners' Association, Inc., a Tennessee nonprofit corporation.
- (d) **"Condominium Assessments"** are the manner by which a Unit Owner pays his/hers/their proportionate share of the Common Expenses.
- (e) **"Board"** or **"Board of Directors"** means the Board of Directors of the Collier Place Condominium Owners' Association, Inc., a Tennessee nonprofit corporation.
- (f) **"Building"** or **"Buildings"** means the buildings located on the Parcel and forming part of the Condominium Property and containing the Units. The "Building" or "Buildings" are and shall be delineated on the Plat, attached as **Exhibit "B,"** which may be amended from time to time by the Declarant.
- (g) **"Bylaws"** means the Bylaws of Collier Place Condominium Owners' Association, Inc., attached hereto as **Exhibit "E"** and made a part hereof, as amended from time to time. For purposes of the Act, all provisions contained in this Master Deed dealing with the administration and maintenance of the Condominium Property shall be deemed to be a part of the Bylaws.
- (h) **"Charter"** means the Charter of the Condominium Association attached hereto as **Exhibit "D"** and by this reference made a part hereof, as amended from time to time.
- (i) **"Common Elements"** means General Common Elements and Limited Common Elements.

- (j) **"Common Expenses"** means the proposed or actual expenses affecting the Property, including reserves lawfully assessed by the Board. Such Common Expenses shall consist of the expenses of the administration, management, maintenance, operation, repair or replacement of, and additions to the Common Elements, and any other expenses incurred in conformance with the Act, this Master Deed and the Bylaws, including any other or additional expenses agreed upon as Common Expenses by a Majority of the Unit Owners, and expenses declared to be Common Expenses by this Master Deed or by the Bylaws.
- (k) **"Declarant"** means Realty Innovations, LLC, a Tennessee limited liability company, and any successor or assignee of said corporation, provided such successor or assignee is designated in writing by said corporation.
- (l) **"Deed of trust"** shall include a mortgage, and a "deed of trust beneficiary" shall include a mortgagee and a holder of a deed of trust.
- (m) **"Development Mortgagee"** means Community Trust and Banking Company and/or Cohutta Banking Company of Tennessee as the holder(s) of those certain Tennessee Deeds of Trust and Security Agreements (Construction Loans) recorded in the Register's Office of Hamilton County, Tennessee.
- (n) **"Director"** means a member of the Board of Directors.
- (o) **"First Board"** means the Board of Directors appointed by Declarant.
- (p) **"First Mortgage"** means a Recorded Mortgage that constitutes a first in priority lien on the Condominium Property or any portion thereof or any interest of a Unit Owner in this Condominium Property or in a Unit and the Unit's appurtenant undivided interest in the Common Elements.
- (q) **"First Mortgagee"** means a Lender that is the holder of a First Mortgage.
- (r) **"General Common Elements"** means and includes all of the Property not contained within the cubic boundaries of any Unit, including but not limited to: roofs, foundations, pipes, ducts, flues, chutes, floors, ceilings, conduits, wires, and other utility installations to the outlets; bearing walls, perimeter walls, columns and girders, to the undecorated and/or unfinished interior surfaces thereof, regardless of location and whether exterior or interior; windows and window frames, doors and door frames and trim, except the interior surfaces thereof; hallways, lobbies, basements, mechanical equipment areas, storage areas, furnace rooms, stairways, walkways, driveways, outside parking areas, gardens, lakes, recreational areas and facilities which are now or hereafter contained within the Condominium Property and are not designed as Limited Common Elements; all installations of, and wires, pipes, ducts flues and conduits for, power, cable television, heating and air conditioning, lights, gas, hot and cold water and sewage existing for common use, and all other parts of the Condominium Property desirable or rationally of common use or necessary or convenient for the Condominium Property's existence, maintenance and safety, and all areas and facilities designated as General Common Elements herein, in the Plat, and in the Act. Structural columns and load bearing walls located within the boundaries of a Unit shall be part of the General Common Elements. Any reference to "General Common Elements" appearing on the Plat shall be deemed solely for purposes of general information and shall not be limiting in any way.
- (s) **"Initial Management Agreement"** means the initial management agreement, if any, between Declarant, on behalf of the Condominium Association, and a management company, which may be a corporation or entity related to Declarant, to act as Managing Agent for the Property.
- (t) **"Insurance Trustee"** means a person or entity with trust powers that may be designated by the Board to hold insurance proceeds in trust.



- (u) **"Lender"** means any owner or holder, or any successor or assign thereof, of a Recorded Mortgage on the Condominium Property, or any portion thereof, or an interest of such Unit Owner.
- (v) **"Limited Common Elements"** means all Common Elements serving or designated either herein or in the Plat as serving exclusively a single Unit or one or more adjoining Units, to the exclusion of other Units, as a appurtenance thereto, the enjoyment, benefit or use of which is reserved for the lawful Occupants of such Unit or Units either in this Master Deed or on the Plat or by the Board. Said Limited Common Elements shall include, but shall not be limited to, such portions of the perimeter walls, floors and ceilings, doors, vestibules, windows, balconies or patios, decks, porches, entryways, stairways, walkways, gardens, courtyards, storage areas, sewage system(s) serving only one unit, and all associated fixtures and structures therein, as lie outside the Unit boundaries and serve exclusively a single Unit, as aforesaid. Each Unit Owner, by accepting a deed to his/her Unit, agrees to the designation of Limited Common Elements herein and in the Plat. Limited Common Elements shall include entry porches, patios, and garage entry driveways directly serving a single Unit, whether or not specifically designated as such on the Plat.
- (w) **"Majority"** or **"Majority of the Unit Owners"** means the owners of more than fifty percent (50%) of the voting rights of the Unit Owners.
- (x) **"Managing Agent"** means the management company or entity or individual manager, if any, hired by the Board to maintain, repair, replace, administer and operate the Property, or any part thereof, to the extent deemed advisable by the Board.
- (y) **"Master Deed"** means this instrument, by which the Property is submitted to the provisions of the Act, as hereinafter provided, as the Master Deed may be amended from time to time.
- (z) **"Mortgage"** means a mortgage or deed of trust covering a Unit and the undivided interest in the Common Elements appurtenant thereto.
- (aa) **"Occupant"** means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.
- (bb) **"Parcel"** means the parcel or tract of real estate described on **Exhibit "A,"** attached to this Master Deed.
- (cc) **"Person"** means a natural individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.
- (dd) **"Phase"** or **"Phases"** means each separate grouping of Units, Limited Common Elements and General Common Elements in the development of COLLIER PLACE AT MULBERRY PARK which is initiated through the submission of additional buildings shown as "Future Units" on the Plat.
- (ee) **"Plat"** means the survey of the Parcel submitted to the provisions of the Act showing the number of each Unit, expressing its area, location and other data necessary for identification, with said Plat for COLLIER PLACE AT MULBERRY PARK being attached hereto as **Exhibit "B."** Plat shall also mean the plat for the additional Phase or Phases marked as FUTURE UNITS. The Declarant reserves the right to amend the plat from time to time without the consent of the Unit Owners or the Condominium Association, until all of the Units have been sold or leased. The amended plat will be included as an exhibit to each deed of conveyance or as a separate instrument.
- (ff) **"Property"** or **"Condominium Property"** means all the land and space comprising the Parcel, and all improvements and structures thereon, including the Buildings and all easements, rights and appurtenances belonging thereto and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.

(gg) "Record" or "Recording" refers to the record or recording in the Register's Office of Hamilton County, Tennessee.

(hh) "Unit" shall mean "Apartment" as defined in the Act, but shall not include the Common Elements. Specifically, "Unit" means a part of the Condominium Property designated and intended for any type of independent use so specified as a Unit on the Plat and listed on Exhibit "B" attached hereto, and as set forth on the Plat as a Unit. The boundary lines of each Unit shall be the finished but unpainted and undecorated interior surfaces of the sheetrock, plaster board or other wallboard material (other than paneling) forming its perimeter walls, the undecorated and/or unfinished top surface of the underlayment of the lowermost floors, the finished but unpainted and undecorated interior surface of the sheetrock, plaster board or other ceiling-board material forming the uppermost ceilings, the finished but unpainted and undecorated interior surface of the sheetrock, plaster board or other ceiling-board material forming a finished attic area, and the interior surfaces of the door and door frames and trim located in perimeter walls, window and window frames and trim; and the Unit shall include both the portions of the Building within such cubic boundary lines and the space so encompassed. However, a Unit shall not include structural columns and load bearing walls (or the pipes, ducts, wires, conduits or other facilities contained within such structural columns and load bearing walls) which are located within the boundaries of a Unit, or pipes, ducts, wires, conduits and other facilities running through any interior wall or partition or through any non-livable space of a Unit for the furnishing of utilities or other services to other Units and/or the Common Elements. The Unit shall include the furnace, hot water heater and air conditioning compressor exclusively serving only that Unit whether or not located within the boundaries of that Unit, provided that the chutes, flues, ducts, pipes, conduits and wires extending from such equipment and not located within the boundaries of a Unit shall be part of the General Common Elements. Subject to the provision of the foregoing sentence, if any chutes, flues, ducts, pipes, conduits, wires, compressors, furnaces, hot water heaters, air conditioning compressor system, or any other apparatus lie partially within and partially outside of the designated boundaries of a Unit, any portions thereof which are within the boundary lines of a Unit and serve only that Unit shall be deemed a part of that Unit, while any portions thereof which are within the boundary lines of a Unit and serve more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. A Unit shall include all improvements and decorating contained within the designated boundaries of a Unit including any plumbing and electrical fixtures, wall and floor coverings, paneling, molding, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished interior surfaces of the walls, floors, and ceilings constituting the perimeter boundaries of such area. A Unit shall include the garage space, if any, appurtenant to such Unit. Any Unit may be jointly or commonly owned by more than one person.

(ii) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit, and shall be deemed the same as a "co-owner" under the Act. Unless specifically provided otherwise herein, the Declarant shall be deemed a Unit Owner so long as it is the titleholder of any Unit. In the event title to any Unit is conveyed to a trust which holds title to a Unit under the terms of which all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder shall be considered Unit Owners for all purposes and shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Master Deed against such Unit.

(jj) Those terms which are capitalized herein, but not specifically defined in Article 1 of this Master Deed, shall have the meaning set forth in Article 1 of the Declaration.

## ARTICLE 2: PLAN OF DEVELOPMENT

**2.1 Submission of Property to the Act.** The Declarant, by recording this Master Deed, hereby submits and subjects the Parcel and the Condominium Property to the provisions of the Act and hereby establishes a horizontal property regime as authorized and described in the Act and to be hereafter known as COLLIER PLACE AT MULBERRY PARK.

**2.2 Property.** The Property subject to this Master Deed and the Act is located in the Second Civil District, Hamilton County, Tennessee, being more particularly described in Exhibits "A" and "B" attached to this Master Deed, which exhibits are specifically incorporated herein by this reference.

**2.3 Plat.** The initial plat of survey relating to the Property is attached hereto as Exhibit "B" (the "Plat"). The Plat sets forth the numbers, areas, locations, and other data as required by the Act.

**2.4 Recordation of Supplemental Documents.** Declarant reserves the right to alter the plan and configuration of the Buildings and Units described on the Plat (Exhibit "B") by filing for record a supplemental Plat or Plats containing the new plan of development and setting forth the revised plan of Units and Common Elements.

### 2.5 Expandable Regime.

(a) **Right to Expand or Release.** Additional Land is not a part of the horizontal property regime created hereby and is not subject to this Master Deed as the date of its Recording. However, Declarant hereby reserves the right, exercisable at its sole option, to expand Collier Place at Mulberry Park from time to time to include additional Units, additional Limited Common Elements, and/or additional General Common Elements upon Additional Land or any portion or portions thereof at such time and in such proportions and Phases as Declarant may deem expedient. The exercise of any such right to expand shall not be predicated upon Declarant's first obtaining the consent or vote of any Unit Owner or Lender. Except for zoning and other governmental requirements, there are no limitations as to the location of the improvements on Additional Land. Notwithstanding any provision of the Act or this Master Deed which might be construed to the contrary, Declarant shall not be required to expand Collier Place at Mulberry Park or to add Additional Land thereto; nor shall the exercise of any such right to expand obligate Declarant to further expand Collier Place at Mulberry Park.

In addition to the foregoing and notwithstanding any other provision of this Master Deed to the contrary, Declarant, at its sole discretion, may also release and withdraw from the horizontal property regime created hereunder those future Phases on the Property shown on the Plat, that have not yet been developed by the construction of Units thereon, by Recording an appropriate document describing the property to be released; provided, however, that no then existing Common Elements directly serving existing Units may be released or withdrawn from the horizontal property regime.

### (b) Restrictions and Limitations Applicable to Additional Land.

(i) At the sole option of Declarant, maintenance facilities, Association offices and entrance gates may be created on Additional Land, along with such other amenities, if any, as Declarant, at its sole option, may determine;

(ii) Architectural design of all Units and Common Elements on Additional Land shall, in the opinion of the Declarant, be appropriate and suitable to and compatible with the architectural design of the improvements located on Collier Place at Mulberry Park;

(iii) All Buildings, Units, and amenities constructed on Additional Land shall meet all applicable building code and zoning requirements, and construction quality shall be comparable to construction quality in the then existing Phases;

**2.6 Statement of Declaration.** Declarant and members of Declarant also hold title to that certain tract or parcel of real property located in Hamilton County, Tennessee, as more particularly described in the "Declaration of Covenants, Conditions and Restrictions for Mulberry Park" (the "Declaration"), with said property being herein referred to as the "Mulberry Park Property" or "MP Property." As set forth in the Declaration, Declarant retains the right to develop and improve all or a portion of the MP Property and to construct thereon a residential development to be known as "Mulberry Park," in which free standing single-family homes, condominiums, and/or townhomes will be constructed. Collier Place at Mulberry Park is a Neighborhood within, and comprises a portion of, the residential community development known as Mulberry Park. The development of Mulberry Park is described in and governed by the terms of the Declaration, which is filed in the Register's Office of Hamilton County, Tennessee. Members of the Collier Place Condominium Owners' Association, Inc. are Members of the Mulberry Park Community Association.

In addition to the terms and conditions of this Master Deed, the Condominium Property shall be held, sold, and conveyed subject to the Declaration, which shall run with the property, and bind all parties having any right, title or interest in or to any part of the Condominium Property, their successors and assigns, and shall inure to the benefit of each Unit Owner. It is provided, however, that to the extent any term, covenant or condition contained in the Declaration conflicts with the concept, design, and/or configuration of the Condominium Property, or with any specific term or condition of this Master Deed, this Master Deed shall control with respect to the Property to the extent necessary to permit the development of the Condominium Property in the manner contemplated herein.

**2.7 Provisions of Master Deed vs. Declaration.** Notwithstanding the provisions of the preceding paragraphs, to accommodate the development of Collier Place at Mulberry Park and Mulberry Park, Declarant sets forth the following provisions:

(a) **Common Areas.** The Common Elements of Collier Place at Mulberry Park shall not constitute "Common Area" of Mulberry Park for any purpose under the Declaration. The Common Elements of Collier Place at Mulberry Park (the Condominium Property) shall be deemed to be exclusive to the Unit Owners' of Collier Place at Mulberry Park. However, the owners of Lots in Mulberry Park shall have the right to use the nature trails/walking trails/sidewalks of Mulberry Park that wind through the Common Elements of Collier Place at Mulberry Park (the Condominium Property), and the same shall be a Common Area and shall be maintained by the Mulberry Park Community Association, Inc. In addition, the Condominium Association may rent the Common Elements/common areas (e.g. pool, clubhouse) to the owners of lots in Mulberry Park for social functions, but this shall be at the discretion of the Condominium Association. Notwithstanding the above, until the Turnover Date (as defined in the Declaration), the Declarant reserves the right to add to and/or amend, without consent or joinder of any other party, this provision.

(b) **Units/Lots.** For purposes of the Declaration, each individual Unit shall constitute a "Lot" within the meaning of the Declaration, and Declarant (as and to the extent it continues to own the Property and any individual Unit thereon) and Unit Owners shall constitute "Members"/"Owners" within the meaning of the Declaration.

(c) **Size Requirements/Setbacks.** The minimum square footage requirements and building setback requirements contained in the Declaration shall not apply to the Condominium Property.

(d) **Assessments.** In addition to the levy of assessments for the Condominium Property, Article 7 provides for assessments levied by the Mulberry Park Community Association, Inc., pursuant to the Declaration (the "Common Assessments"). These assessments shall represent the Condominium Property's (Neighborhood's) portion of the Common Expenses for those Common Areas available for all residents of Mulberry Park, as set forth in the Declaration, including, but not limited to parks, open spaces, and nature trails/walking trails (which shall include the nature trails/walking trails of Mulberry Park that wind through the Common Elements of Collier Place at Mulberry Park).

### ARTICLE 3: UNITS

**3.1 Units.** The legal description of each Unit shall consist of the identifying number of such Unit as shown on the Plat. Every deed, lease, deed of trust or other instrument shall legally describe a Unit by its identifying number as shown on the Plat, and every such description shall be deemed good and sufficient for all purposes, as provided in the Act. Except as provided by the Act [see paragraph 1(o)], no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause such Owner's Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat.

**3.2 Description of Units.** All Buildings, which have 4 Units each, shall be a single Phase; therefore, there will be 15 Phases (being numbers 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, and 16), 60 Units. There are three types of Units, designated as "Renwick", "Roycroft", and "Ruskin", with each being more particularly described as follows and as more particularly shown on the Plans:

(a) The "Renwick" Units contains approximately 1,364 square feet of heated space, and approximately 541 square feet of garage area, for total of 1,906 square feet. Each such Unit consists of a foyer, great room, dining room, kitchen, laundry room, master bedroom, master bath, sunroom, second bath, closets and a garage, as more particularly shown on the Plans.

(b) The "Roycroft" Units contain approximately 1,675 square feet in heated space and approximately 541 square feet of garage area, for a total of 2,216 square feet. Each such Unit consists of a foyer, great room, dining room, kitchen, laundry room, master bedroom, master bath, second bedroom, second bath, sunroom, closets and a garage, as more particularly shown on the Plans.

(c) The "Ruskin" Units contain approximately 1,863 square feet in heated space and approximately 541 square feet of garage area, for a total of 2,404 square feet. Each such Unit consists of a foyer, great room, dining room, kitchen, utility room, master bedroom, master bath, second bedroom, second bath, third bedroom, sunroom, closets and a garage, as more particularly shown on the Plans.

Each Unit type and the location of each Unit in each Phase is more fully shown on the Plat attached to this Master Deed as **Exhibit "B"** and the Plans attached to this Master Deed as **Exhibit "C"**. Each Unit is designated for the purpose of any conveyance, lease or other instrument affecting the title thereof by a number designating the specific building which contains the particular Unit, followed by a comma and then another number which represents the address of the Unit on Collier Place, followed by one of the

following: "Ren," "Roy," or "Rus," designating which type of Unit, e.g., Building 1, Unit 4101, Rus (indicates a Ruskin Unit in Building 1, located as shown on the Plat, with an address of 4101 Collier Place, Ooltewah, TN 37363).

#### **ARTICLE 4: COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

**4.1 Percentage of Ownership.** The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit and as defined in Article 1. Ownership of the Common Elements, except for sites designated as "Future Units" on the Plat, shall be by the Unit Owners as tenants-in-common. The percentage of undivided interest in and to the Common Elements attributable to each Unit shall be as set forth in **Exhibit "B"**. Such percentages of undivided interests may be altered by Declarant, at such time as additional Units are added pursuant to the rights retained by Declarant in Article 1 and Article 2.4. The percentage of undivided interest of each Owner in the Common Elements is appurtenant to the Unit owned by the Owner and may not be separated from the Unit to which it appertains. The undivided percentage of ownership in the Common Elements corresponding to any Unit shall be deemed conveyed, transferred, encumbered or otherwise affected with that Unit, even though the legal description in the instrument conveying, transferring, encumbering or otherwise affecting said Unit may refer only to the fee title to that Unit and not expressly mention or describe the percentage of ownership in the Common Elements corresponding to that Unit, or may refer to an incorrect percentage for that Unit.

**4.2 No Partition.** The Common Elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership thereof so long as the Common Elements are used for a horizontal property regime, and in any event, all Lenders must be paid in full prior to bring an action for partition or the consent of all Lenders must be first obtained.

**4.3 Rights of Owners and Occupants.** Each Unit Owner shall have the right to use the Common Elements (except for the Limited Common Elements and further except for any portion of the Property subject to easements, licenses, and concessions made by or assigned to the Board) in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend not only to each Unit Owner, but also his/her agents, servants, tenants, family members, invitees and licensees. However, the Limited Common Elements designated as serving or serving exclusively a single Unit or one or more adjoining Units are hereby assigned to such Unit or Units and the exclusive use and possession of such Limited Common Elements are reserved to the lawful Occupants of such Unit or Unit. Such rights to use the Common Elements, including the Limited Common Elements, shall be subject to and governed by the provisions of the Act, Master Deed, Bylaws and rules and regulations of the Condominium Association. In addition, the Board shall have the authority to grant concessions, grant easements or grant licenses with respect to parts of the Common Elements, subject to the provisions of this Master Deed and the Bylaws, and such rights to use the Common Elements, including but not limited to the Limited Common Elements, shall be subject to the provisions of any such concession, license and easement. All income derived by the Condominium Association from concessions or other sources shall be held and used for the benefit of the members of the Condominium Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

**4.4 Designation and Re-designation of Limited Common Elements.** With respect to each Unit now or hereafter built, Declarant reserves the right to designate and re-designate Limited Common Elements as appurtenant to such Unit until such time as a deed from Declarant to the first purchaser of such Unit is

Recorded, and for such purposes, Declarant reserves the right to convert Common Elements into Limited Common Elements and to re-designate Limited Common Elements as Common Elements, provided that Declarant shall first amend any Plat of such Unit previously Recorded, and, if necessary, the Master Deed, to effect such designations and re-designations; provided further, that this right shall be confined to areas within and/or immediately adjacent to the Building housing each such Unit and in no event shall this Paragraph confer upon Declarant the right to alter Limited Common Elements assigned to previously deeded Units.

**4.5 Use by Declarant.** During the period of sale by the Declarant of any Units, the Declarant, and the Declarant's agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access, ingress to and egress from the Buildings and Property, including all Common Elements, as may be required for purposes of sale of the Units. While the Declarant owns any of the Units and until each Unit sold by it is occupied by the purchasers, the Declarant and its employees may use and show one or more of such unsold or unoccupied Units as a model Unit or Units, or as a sales office, and may maintain customary signs in connection therewith.

## **ARTICLE 5: ASSOCIATION OF UNIT OWNERS AND ADMINISTRATION AND OPERATION OF THE PROPERTY**

**5.1 Collier Place Condominium Owners' Association, Inc.** There has been or will be formed the Condominium Association having the name Collier Place Condominium Owners' Association, Inc., a Tennessee nonprofit corporation, which Condominium Association shall be the governing body for all of the Unit Owners and shall be operated to provide for the maintenance, repair, replacement, administration, operation and care of the Property as provided in the Act, this Master Deed and Bylaws. The Condominium Association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Condominium Association is organized, and to do every other act not inconsistent with law which may be appropriate to promote and attain the purposes set forth in the Act, this Master deed or the Bylaws. All of the Unit Owners irrevocably constitute and appoint the Condominium Association, in their names, as attorney in fact to effectuate the above. This power is coupled with an interest and may not be revoked. The Bylaws for the Condominium Association shall be the Bylaws attached to this Master Deed and made a part hereof as **Exhibit "E"**. The Board of Directors of the Condominium Association shall be elected and shall serve in accordance with the provisions of the Bylaws and of the Act. Subject to the Act, the Board shall have standing to act in a representative capacity on behalf of the Unit Owners, as their interests may appear, in relation to matters involving the Common Elements or, if so directed by the affected Unit Owners, in matters involving more than one Unit. The fiscal year of the Condominium Association shall be determined by the Board and may be changed from time to time as the Board deems advisable. The Condominium Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Condominium Association shall be for the sole benefit of the Unit Owners, and all funds received by the Condominium Association shall be held and applied by it for the use and benefit of the Unit Owners in accordance with the provisions of this Master Deed and the Bylaws.

**5.2 Rights of the Condominium Association.** The Condominium Association shall have all of the rights it may have pursuant to Tennessee law, the Bylaws, and this Master Deed and shall include, but not be limited to the following:

- (a) Right to Enter.** The Condominium Association shall have the right to enter into Units for maintenance, emergency, security, or safety purposes, which right may be exercised by the Condominium Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the

performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit.

(b) **Rules and Regulations.** The Condominium Association shall have the right to make and to enforce reasonable rules and regulations governing the use of the Condominium Property, including the Units, Limited Common Elements, and Common Elements.

(c) **Right of Enforcement.** The Condominium Association shall have the right to enforce use restrictions, provisions of the Master Deed and Bylaws, and rules and regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges. These powers, however, shall not be construed as limiting any other legal means of enforcing the use restrictions or rules and regulations of the Condominium Association. Any fines imposed in accordance with this Section 7.3 shall be considered an assessment against the Unit and may be collected in the manner provided for collection of other assessments.

(d) **Permits, Licenses, Easements, etc.** The Condominium Association shall have the right to grant permits, licenses, utility easements, and other easements (including drainage and storm water easements) over, through and under the Common Elements without a vote of the Owners.

(e) **Right of Maintenance.** The Condominium Association shall have the right to control, manage, operate, maintain, improve and replace all portions of the Condominium Property for which the Condominium Association is assigned maintenance responsibility under this Master Deed.

(f) **Property Rights.** The Condominium Association shall have the right to acquire, hold, and dispose of tangible and intangible personal property and real property.

(g) **Casualty Loss.** The Condominium Association shall have the right to deal with the Condominium Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Master Deed.

(h) **Governmental Entities.** The Condominium Association shall have the right to represent the Unit Owners in dealing with governmental entities.

(i) **Common Elements.** The Condominium Association shall have the right to temporarily close any portion of the Common Elements for emergency, security, safety purposes or for any such other reasonable purpose as determined in the sole discretion of the Board, with no prior notice of such closing to the Owners, for a period not to exceed one (1) year. Furthermore, the Condominium Association shall have the right to permanently close any portion of the Common Elements (excluding Limited Common Elements) upon thirty (30) days prior notice to all Unit Owners. Any portion of the Common Elements which has been permanently closed may be reopened by action of the Board or by the vote of Owners holding a majority of the votes cast at a duly called special or annual meeting.

**5.3 Management of Property.** The Board shall have the authority to engage the services of an agent (herein sometimes referred to as the "Managing Agent") to maintain, repair, replace, administer and operate the Property, or any part thereof, to the extent deemed advisable by the Board. The Board shall require that such Managing Agent have fidelity bond coverage on its employees handling Condominium



Association funds. The cost of such services shall be a common expense, as defined herein. Any vote of the Board to adopt any form of management of the Property without the services of a professional property management company shall be subject to the prior approval of a majority of all first lien deed of trust beneficiaries of Units. However, if the Board elects to engage the services of the Managing Agent and if the Board of Directors of the Mulberry Park Community Association, Inc. has engaged the services of a Managing Agent, then the Board of Directors of the Collier Place Condominium Owners' Association, Inc. must engage the services of the same Managing Agent under contract with Mulberry Park Community Association, Inc., and the costs and fees properly apportioned among the existing Associations.

**5.4 Initial Management Contract.** The First Board, appointed as provided herein, shall ratify and approve the Management Agreement between the Declarant, on behalf of the Condominium 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, subject to the provisions of Article 5.3, above.

**5.5 Non-Liability of the Directors, Board, Officers and Declarant.** Neither the Directors, Board, officers of the Condominium Association, nor the Declarant shall be personally liable to the Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors, Board, officers, or Declarant, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Unit Owners shall indemnify and hold harmless each of the directors, Board, officers, or Declarant, and their respective heirs, personal and legal representatives, successors and assigns in accordance with, and as provided in, the Charter of the Condominium Association and Bylaws.

**5.6 Board's Determination Binding.** In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of the Master Deed or Bylaws, the determination thereof by the Board shall be final and binding on each and all such Unit Owners.

**5.7 Board's Authority to Permit Use by Others.** The Board shall have the authority to permit Persons other than Unit Owners to use portions of the Common Elements, including parking lots, club rooms and recreational facilities, upon such terms as the Board shall deem advisable; provided, however, that the Board may not lease any portion of the Common Elements to any such Person. All proceeds and revenues, if any, received from a permitted use of the Common Elements shall be used to defray Common Expenses in such manner as the Board shall determine.

## **ARTICLE 6: MEMBERSHIP IN THE CONDOMINIUM ASSOCIATION**

**6.1 Membership.** All Owners, by virtue of their ownership of an interest in a Unit, excluding persons holding such interest under a Mortgage, are members of the Condominium Association and, except as otherwise provided herein or in the Bylaws, shall be entitled to vote on all matters upon which members of the Condominium Association are entitled to vote pursuant to this Master Deed and the Act and in accordance with the Bylaws.

**6.2 Votes.** Subject to the provisions of the Condominium Instruments, each Owner shall be entitled to cast one (1) vote for each Unit in which such Owner holds the interest required for membership, which vote will be appurtenant to such Unit. Each vote shall be weighted in accordance with the percentage of undivided interest in the Common Elements attributable to each Unit, as shown on **Exhibit "B"** attached

hereto and by reference incorporated herein, as the same may be amended from time to time by the Declarant. No votes may be split; each Owner must vote his or her entire weighted vote on each matter to be voted on by the Owners.

## **ARTICLE 7: NEIGHBORHOOD ASSESSMENTS**

**7.1 Overview.** The Condominium Association shall have the power to levy assessments as provided herein and in the Act. The payment of Condominium Assessments, specific assessments, and special assessments provided for herein shall be used for the general purposes of promoting the health, safety, welfare, common benefit, and enjoyment of the Unit Owners and Occupants of Units in Collier Place at Mulberry Park as may be more specifically authorized from time to time by the Board of Directors. Each Owner of any Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Condominium Association: (i) Condominium Assessments; (ii) special assessments; (iii) specific assessments, and (iv) assessments levied by the Mulberry Park Community Association, pursuant to the Restrictive Covenants (which are paid as a portion of the Condominium Assessments), all as herein provided. All such assessments, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be a charge on the Unit, shall be a continuing lien upon the Unit against which each assessment is made, and shall be payable as prescribed by the Board of Directors or as provided for herein. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) 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.

**7.2 Condominium Assessments.** Each Unit Owner shall pay his/her proportionate share of the Common Expenses by the payment of Condominium Assessments.

**(a) Creation of Obligation.** A Unit Owner, including Declarant, shall not be liable for Common Expenses with respect to a Unit until the date of substantial completion of the construction of such Unit and until the date of the initial sale of such Unit by Declarant to the first user and Occupant thereof. Upon the completion of construction of the Common Elements, Declarant, except for its responsibilities set forth in the foregoing sentence and as a Unit Owner as provided herein, and further as set forth in Declarant's sales agreements with Unit Owners, shall not have the responsibility for the maintenance, repair or replacement of any part of the Common Elements.

**(b) Proportionate Share.** The proportionate share of the Common Expenses for each Unit Owner shall be in the same ratio as his/her percentage of ownership interests in the Common Elements, and shall be equal to that share of each other Unit Owner. Payments of Common Expenses, including any payment thereof required by a contract for sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws and shall be paid as Condominium Assessments. The percentage of ownership and corresponding amount of Common Expenses payable with respect to each Unit is set forth on **Exhibit "B"** hereto, but such percentage and such amount may be adjusted either as a result of the addition of a new Phase in Collier Place at Mulberry Park or as a result of the adoption of a new annual Condominium Association budget or as otherwise permitted in this Master Deed and the Bylaws with such adjustments (whether upward or downward) being customarily implemented by the Board at the beginning of each fiscal year. No Unit Owner shall be exempt from payment of his/her proportionate share of the Common Expenses by waiver or non-use or non-enjoyment of the Common Elements or by abandonment of his/her Unit, and such proportionate share of the

Common Expenses is a personal obligation of the Unit Owner for which such Unit Owner shall have personal liability.

(c) **Mulberry Park Community Association, Inc. Assessments.** The Condominium Assessments shall also include the Common Assessments levied by the Mulberry Park Community Association, Inc., pursuant to and as defined in the Declaration. These assessments shall represent the Unit Owner's portion of the (1) common area expenses for those common areas available for all residents of Mulberry Park, as set forth in the Declaration, including, but not limited to parks, open spaces, and nature trails/walking trails (which shall include the nature trails/walking trails of Mulberry Park that wind through the Common Elements of Collier Place at Mulberry Park) and (2) any other assessments levied by the Mulberry Park Community Association, Inc.

(d) **Method of Payment.** Condominium Assessments shall be paid in equal monthly installments due on the first day of each month. At the time of the closing of the purchase of a Unit, the Buyer shall pay his/her/their first three months of Condominium Assessments. If the closing of the purchase of a Unit does not take place on the first of the month, the Condominium Association will also collect (in addition to the first three months of Condominium Assessments) the pro rata amount of Condominium Assessments for the remainder of the month during which the closing takes place.

(e) **Budget.** It shall be the duty of the Board, prior to the beginning of each fiscal year, to prepare a budget covering the estimated costs of operating the Condominium Property during the coming year. The Board shall cause the budget and notice of the assessments to be levied against each Unit for the following year to be delivered to each member at least thirty (30) days prior to the end of the Condominium Association's fiscal year. The budget and the assessment shall become effective unless disapproved at a duly called and constituted meeting of the Condominium Association by a vote of at least fifty-one (51 %) of the total eligible voting power of the Condominium Association and the Declarant (so long as the Declarant owns any portion of the Condominium Property); provided, however, if a quorum is not obtained at the such meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at the meeting.

Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Condominium Association. The proposed budget and assessment shall be delivered to the members at least thirty (30) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

**7.3 Special Assessments.** The Board of Directors may, at any time, and in addition to any other rights it may have, levy a special assessment against all Unit Owners, as, in its discretion, it shall deem appropriate. Notice of any such special assessment shall be sent to all Unit Owners prior to becoming effective. Notwithstanding the above, for so long as the Declarant owns any portion of the Condominium Property, all special assessments must be consented to by the Declarant prior to becoming effective.

**7.4 Specific Assessments.** The Board shall have the power to specifically assess expenses of the Condominium Association against Units (a) receiving benefits, items, or services not provided to all Units within the Condominium Property that are incurred upon the request of the Unit Owner to receive specific items or services relating to the Unit or (b) that are incurred as a consequence of the conduct of less than all Unit Owners, their licensees, invitees, or guests. The Condominium Association may also levy or specifically assess any Unit to reimburse the Condominium Association for costs incurred in bringing the Unit into compliance with the provisions of the Master Deed, any applicable Supplemental Master Deed, the Articles, the Bylaws, and rules, provided the Board gives prior notice to the Unit Owner and an opportunity for a hearing.

**7.5 Capital Fund.** Declarant and/or the Board may also establish a working capital fund. The working capital fund shall be maintained in a separate account for the use and benefit of the Condominium Association. The purpose of this fund would be to insure that the Board will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund are not to be considered as advanced payment of regular assessments. Declarant may not use the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Condominium Association.

**7.6 Late Payment.** If any Unit Owner shall fail or refuse to make any such payment of any Assessment within fifteen (15) days of when due as provided herein and in the Bylaws, the amount thereof, together with such accelerated amounts as are provided in the Bylaws, and together with late charges and interest in the amounts set forth in the Bylaws or the rules and regulations of the Association, and together with all expenses, including attorney's fees incurred by the Board in any proceeding brought to collect such unpaid Assessments, shall be obligations of the Unit Owner and shall, without the necessity of Recording any lien instrument, automatically constitute a lien in favor of the Association, enforceable by the Board, on the interest of such Unit Owner in the Property and his/her Unit; provided, however, that the Board, at its option, may Record a notice of such lien to provide public notice of its existence. To the extent necessary under applicable law, Declarant hereby grants such lien to the Condominium Association, to be enforceable by the Board. Such lien in favor of the Condominium Association, which lien, for the purposes of this Master Deed and the Bylaws, shall be deemed to attach on the date on which such payment of Condominium Assessments are due, shall be subordinate to the lien of any First Mortgage which is Recorded prior to the date such lien for unpaid Common Expenses attached. If such First Mortgagee with a First Mortgage which is Recorded prior to the date such lien for unpaid Common Expenses attached, obtains title to a Unit or any other interest in the Property by reason of foreclosure or deed in lieu of foreclosure, such First Mortgagee, its successor or assigns, shall take such Unit or other interest in the Property free of any claims for unpaid Assessments, except for the amount of said proportionate share of such Assessments which becomes due and payable from and after the date on which such First Mortgage either takes possession of the Unit or the interest encumbered by such First Mortgage, or accepts a conveyance, transfer or assignment of the Unit or of any interest therein (other than as security) in lieu of any foreclosure of such First Mortgage, or foreclosures or files suit to foreclose its First Mortgage or causes a receiver to be appointed to take possession of the Unit. This provision shall not prevent the Condominium Association from enforcing any rights to which it is entitled against the prior Unit Owner. This provision shall not be amended, modified or rescinded without the prior written consent of all First Mortgagees who are the holders or owners of a First Mortgage Recorded prior to the date of such amendment, modification or rescission.

## ARTICLE 8: MORTGAGES AND OTHER LIENS

**8.1 Liens on Units and Property.** Each Unit Owner shall have the right, subject to the provisions herein, to make or create, or cause to be made or created, one or more Mortgages or other liens on or affecting his/her respective Unit together with his/her respective ownership interest in the Common Elements; provided however, that, from the date this Master Deed is Recorded, no Unit Owner shall have the right or authority to make or create, or cause to be made or created, any Mortgage or other lien on or affecting the Property or any part thereof, except to the extent of his/her own appurtenant interest therein. Declarant shall have the right to make or create, or cause to be made or created, one or more Mortgages or other liens on or affecting all or some of the Units to which it then owns fee simple title, and the Common Elements appurtenant thereto, subject, to the approval of the Development Mortgagee.

**8.2 Mechanic's Liens.** Subsequent to the Recording of this Master Deed, no liens of any nature shall be created or arise against any portion of the Property except liens against any individual Unit or Units and except liens created by Declarant in the development of the Property and the construction of the Units and Common Elements. No labor performed or material furnished in connection with Declarant's development of the Property and the construction of the Units and Common Elements shall be the basis for the filing of a mechanic's lien claim against any Unit owned by a Unit Owner other than Declarant. No labor performed or materials furnished with the consent or at the request of a particular Unit Owner shall be the basis for the filing of a mechanic's lien claim against any Unit other than the Unit on which the labor was performed or to which materials were furnished. If the performance of the labor or furnishing of the materials is expressly authorized by the Board, each Unit Owner shall be deemed to have expressly authorized and consented to such performance of labor and furnishing of materials, and each Unit Owner shall be liable for the payment of his/her Unit's proportionate share of any due and payable indebtedness, as set forth in the Act. A Unit Owner shall not be liable for any claims, damages or judgments entered as a result of any action or inaction of the Board other than for mechanic's liens as set forth above. Each Unit Owner's liability for any judgment entered against the Board or the Association shall be limited to his/her proportionate share of the indebtedness, as set forth in the Act, whether collection is sought through assessment or otherwise.

## ARTICLE 9: SEPARATE REAL ESTATE TAXES OR OTHER CHARGES

Real estate taxes, special assessments, and any other special taxes or charges of the State of Tennessee or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon real property (including, but not limited to, storm water runoff fees, if any), shall be separately assessed upon each Unit, the improvements, alterations and additions to the limited Common Elements exclusively serving such Unit, and its corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that such taxes, special assessments or charges for any year are not separately assessed and levied upon each Unit, but rather are assessed and levied upon the Property as a whole, then each Unit Owner shall pay his/her proportionate share thereof in accordance with his/her respective percentage of ownership interest in the Common Elements and in said event such taxes shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board acting on behalf of all Unit Owners shall have the power to seek relief from or to collect from the Unit Owners their proportionate shares of any such taxes, special assessments or charges, whether assessed and levied on each Unit separately or on the Property as a whole, and to charge and collect all expenses incurred in connection therewith the Common Expense.

## ARTICLE 10: INSURANCE

**10.1 Hazard Insurance.** The Board shall have the authority to and shall obtain insurance for the Property, including the Units and the Common Elements, exclusive of the additions within, improvements to and decorating of the Units by the Unit Owners, against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements and the Buildings, and against such other hazards and for such amounts as the Board may deem advisable. Such insurance shall exclude all of those items to be insured by the individual Unit Owners as provided below, and all or any portion of all Limited Common Elements. Insurable replacement cost shall be deemed to be the cost of restoring the Common Elements, Units or any part thereof to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Board of the Condominium Association, as the trustee for each of the Unit Owners in direct ratio to said Unit Owner's respective percentage of ownership in the Condominium Association, as set forth in the Master Decd, and for the holders of deeds of trust on his/her/their Unit, if any. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against individual Unit Owners. The premiums for such insurance shall be a Common Expense.

**10.2 Liability Insurance.** The Board shall have authority to and shall obtain commercial general liability insurance, in such amounts as it deems desirable, and worker's compensation and other liability insurance as it deems desirable, insuring the Unit Owners (except as limited in this Paragraph), individually and severally, any mortgagee of Record, the Condominium Association, its officers, Directors and Board, and the Managing Agent, if any, and their respective agents, against liability in connection with the ownership, existence, use or management of the Property. Declarant and Declarant's representatives and agents shall be included as additional insured in their capacities as Unit Owners and Board members. The Unit Owners shall be included as additional insureds but only with respect to that portion of the Property not reserved for their exclusive use. Each such policy of insurance shall cover claims of one or more insured parties against other insured parties and shall also contain a waiver of subrogation rights by the insurer against such insured Person or entities. Each such policy also shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Condominium Association or of any other Unit Owner. The premiums for such insurance shall be a Common Expense. The Board shall notify all Persons insured under any such commercial general liability policy in the event of any cancellation thereof, and shall retain in safekeeping any such commercial general liability policy for twenty (20) years after the expiration date of the policy.

The commercial general liability insurance shall cover all the Common Elements, public ways and commercial spaces owned by the Condominium Association whether or not the same are leased to a third party. Coverage shall be for at least \$2,000,000.00 for bodily injury and property damage arising out of a single occurrence. Coverage under this policy shall include without limitation legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements. Such policies must provide that they may not be cancelled or substantially modified by any party without at least thirty (30) days prior written notice to the Condominium Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

**10.3 Fidelity Insurance.** The Board shall have authority to and shall obtain fidelity coverage to protect against dishonest acts on the part of officers, Directors, trustees, and employees of the Condominium

Association and all others who handle or are responsible for handling funds of the Condominium Association; excluding, however, the Managing Agent, which must be covered by its own separate fidelity insurance policy providing the same coverage as required of the Condominium Association. The Condominium Association's fidelity insurance policy shall name the Condominium Association as the insured and shall be in an amount sufficient to provide protection which is in no event less than one and one-half (1.5) times the Condominium Association's estimated annual operating expenses and reserves. The premium for such insurance shall be a Common Expense.

**10.4 Other Insurance.** The Board shall also have authority to and may obtain such insurance for such amounts as it deems desirable, including without limitation, directors' and officers' liability insurance for the Board and officers of the Condominium Association, and increase insurance limits in such amounts, from such sources and in such forms as it deems desirable, insuring the Property and each member of the Board and officer of the Condominium Association, and each member of any committee appointed pursuant to the Bylaws of the Condominium Association against liability arising from the fact that said person is or was a Director or officer of the Condominium Association, or a member of such a committee. The premiums for such insurance shall be a Common Expense.

**10.5 Miscellaneous Coverage.** The Board shall also have authority to and may obtain such other insurance as the Board deems desirable or necessary for the Property or any aspect of the ownership, operation or management thereof, in such amounts, from such sources and in such forms as the Board deems desirable. The premiums for such insurance shall be a Common Expense.

**10.6 Insurance Policy Provision.** The Board will make every effort to obtain insurance with the following provisions or endorsements:

- (a) That the exclusive authority to adjust losses with insurers under policies in force on the Property shall be vested in the Board;
- (b) That in no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by Unit Owners or their respective mortgagees;
- (c) That each Unit Owner may obtain additional insurance at his/her own expense;
- (d) That there be a waiver or subrogation by the insurer as to any claims against the Board, Unit Owners, and their respective members of the household, lessees, servants, agents and guests;
- (e) That the insurance cannot be cancelled, invalidated or suspended because of the conduct of anyone or more Unit Owners, or their respective members of the household, lessees, servants, agents and guests;
- (f) That any "no other insurance" clause in the master policy for the Property not apply to policies placed by Unit Owners covering their respective Units.

**10.7 Unit Owner's Insurance.** A Unit Owner shall be liable for any claim, damage or judgment entered by a court of competent jurisdiction as a result of the use or operation of his/her Unit or caused by his/her own conduct. Each Unit Owner shall be responsible for and shall maintain in force his/her own insurance covering the contents of his/her own unit and the contents of the Limited Common Elements serving his/her Unit, as well as his/her additions and improvements to his/her Unit and the Limited Common Elements serving his/her Unit and the decorations, furnishings, equipment, and personal property therein, and personal property stored elsewhere on the Property, and including, without limitation, all water heaters and other appliances, cabinets, plumbing fixtures, HVAC equipment, wall and floor coverings,

and electrical fixtures and other equipment located either within the Unit or outside the Unit and exclusively serving such Unit. Such casualty insurance shall insure against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the foregoing items of personal property, betterments and improvements. In addition, each Unit Owner shall insure against his/her personal liability and loss or damage by fire or other hazards above and beyond the extent that his/her liability, loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Board for all of the Unit Owners as part of the Common Expenses, as above provided; provided that no Unit Owner shall be entitled to exercise his/her right to maintain insurance coverage in such a way as to decrease the amount that the Board, on behalf of all of the Unit Owners, may realize under any insurance policy which the Board may have in force on the Property at any particular time. Such insurance coverage carried by each Unit Owner shall provide for at least \$300,000.00 for bodily injury and property damage arising out of a single occurrence, and shall provide loss assessment coverage.

Each Unit Owner shall be liable for any increased insurance premium for insurance maintained by the Board occasioned by any improvements made by such Unit Owner to his/her Unit or to the Limited Common Elements serving his/her Unit. Each Unit Owner shall bear the risk of loss for all improvements made to his/her Unit or to the Limited Common Elements serving his/her Unit. Any Unit Owner who obtains individual insurance policies covering any portions of the Property, other than personal property belonging to such Unit Owner, shall be required to file a copy of such individual policy or policies with the Board within thirty (30) days after obtaining such insurance.

**10.8 Insurance Trust.** The Board shall have the authority, but not the obligation, to establish an Insurance Trust and to designate an Insurance Trustee, to whom may be paid the proceeds of all physical damage insurance policies purchased by the Board. Any such Insurance Trust must be established by means of a written Insurance Trust Agreement with the designated Insurance Trustee with terms and conditions acceptable to a majority of all of the members of the Board. The Insurance Trustee's fees, costs and expenses shall be paid by the Board as a Common Expense.

If the Board does not establish an Insurance Trust, the proceeds of all physical damage insurance policies purchased by the Board shall be paid to the Board to be applied pursuant to the terms contained herein. The Board is irrevocably appointed the trustee for each Unit Owner, each lender, other named insureds and their beneficiaries, and any other holder of a lien or other interest in the Property, to file proofs of loss and to adjust any interest in the Property, to file proofs of loss and to adjust and settle all claims arising under insurance policies purchased by the Board and to execute and deliver releases upon the payment of claims. All such action by the Board shall be binding upon each Unit Owner, each lender, other named insureds and their beneficiaries, and any other holders of a lien or other interest in the Property.

The Board shall have the right to select the insurance company or companies with whom insurance coverage may be placed, and all parties beneficially interested in such insurance coverage shall be bound by the selection so made from time to time; provided that the companies selected shall be licensed to do business in Tennessee and shall meet or exceed at least one of the following minimum rating requirements:

- (a) A "B" or better general policy-holder's rating or a "6" or better financial performance index rating in A.M. Best Company's Insurance Reports;
- (b) An "A" or better general policy-holder's rating and a financial size category of VIII or better in A.M. Best Company's Insurance Reports - International Edition;
- (c) An "A" or better in Demotech, Inc.'s Hazard Insurance Financial Stability Ratings;



(d) A "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's, Inc.'s Insurer Solvency Review; or

(e) A "BBB" or better claims-paying ability rating in Standard and Poor's, Inc.'s International Confidential Rating Service.

**10.9 Mortgagee Rights.** No provision contained herein shall give a Unit Owner or any other party priority over a First Mortgagee holding a First Mortgage of a Unit in the event of a distribution to Unit Owners of the insurance proceeds covering losses from damage or destruction to a Unit, Units or the Common Elements.

## **ARTICLE 11: Maintenance, Repairs and Replacements**

**11.1 By the Owner.** Each Unit Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit and all improvements made to the Limited Common Elements assigned to the Unit. This maintenance responsibility shall include, but not be limited to the following: window locks, all doors, doorways, door frames, and hardware that are part of the Unit (except for periodic painting or staining of the exterior surface of exterior doors and entry doors and door frames); cleaning of the interior and exterior sides of all windows and window panes; all portions of the heating and air conditioning system, including the air conditioning compressor serving the Unit and the fan coil; and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all gas, electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit). Notwithstanding anything herein to the contrary, this maintenance responsibility excludes paving of the driveway.

(a) Some Units contain interior support beams which are load bearing beams. No Unit Owner or Occupant shall do any act which jeopardizes or impairs the integrity of such beams.

(b) In addition, each Unit Owner shall have the responsibility:

(i) To keep in a neat, clean and sanitary condition any Limited Common Elements serving his or her Unit including, without limitation, terraces, patios, and balconies;

(ii) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Units;

(iii) To promptly report to the Condominium Association or its agent any defect or need for repairs for which the Association is responsible; and

(iv) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Unit Owner but which responsibility such Unit Owner fails or refuses to discharge (which the Condominium Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Condominium Association, is necessitated by reason of the willful or negligent act of the Unit Owner, his or her family, invitees, tenants or guests, with the cost thereof to be added to and become part of the Unit Owner's next chargeable assessment.

**11.2 By the Condominium Association.** The Condominium Association shall maintain and keep in good repair as a Common Expense the following:

- (a) All Common Elements, including any Limited Common Elements, but excluding all improvements made to such Limited Common Elements; provided, however, the cost of maintenance and repair of Limited Common Elements may be assessed against the Unit Owner who has the exclusive use of the Limited Common Element(s) as the Board may see fit, pursuant to Article 7.4;
- (b) Periodic painting, staining, and/or pressure washing of exterior surfaces of the Building(s), as determined appropriate by the Board; and
- (c) All window frames and casings (except window locks) and glass doors located in the Unit; even though they are part of the Unit; the cost of which may be assessed against the Unit in which the item is located, pursuant to Article 7.4 of this Master Deed.

Subject to the maintenance responsibilities herein provided, the maintenance or repair performed on or to the Common Elements by a Unit Owner or Occupants which is the responsibility of the Condominium Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole expense of such Unit Owner or Occupant, and the Unit Owner or Occupant shall not be entitled to reimbursement from the Association even if the Condominium Association accepts the maintenance or repair.

The Condominium Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Condominium Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest, invitee, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. The Condominium Association shall not be liable to any Owner, or any Owner's Occupant, guest, invitee, or family for any damage or injury caused in whole or in part by the Condominium Association's failure to discharge its responsibilities under this Article where such damage or injury is not a foreseeable, natural result of the Condominium Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Condominium Association to take some action or perform some function required to be taken or performed by the Condominium Association under this Master Deed, or for inconvenience or discomfort arising from the action taken by the Condominium Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Condominium Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Condominium Association. As finished levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Components that may require repair or replacement, such as tile and trim, will be reinstated only to the extent that matching or similar materials are readily available at reasonable costs, as determined in the sole discretion of the Board. Accessibility around personal belongings for workers to perform such repairs is the responsibility of the Unit Owner or Occupant. Removal, storage or other protective measures of personal items are also the responsibility of the Unit Owner or Occupant. If the removal, storage, or other protective measures are not taken by the Unit Owner or Occupant and damage occurs due to the repair process, neither the Condominium Association nor the Board will be liable for such damage. Upon completion of such repairs the Condominium Association will perform cursory cleaning, but shall not be responsible for a detailed cleaning. The Board has sole discretion of defining what is reasonable for the level, quality and extent of the repair and subsequent cleaning. In performing its responsibilities hereunder, the Condominium Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

**11.3 Failure to Maintain.** If the Board of Directors determines that any Unit Owner has failed or refused to discharge properly such Unit Owner's obligation with regard to the maintenance, repair, or replacement of items of which such Unit Owner is responsible hereunder, then the Condominium Association shall give the Unit Owner written notice of the Unit Owner's failure or refusal and of the Condominium Association's right to provide necessary maintenance, repair, or replacement at the Unit Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. Unless the Board of Directors determines that an emergency exists, the Unit Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board of Directors determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Condominium Association as herein provided, the Condominium Association may provide any such maintenance, repair, or replacement at the Unit Owner's sole cost and expense, and such costs shall be an assessment and a lien against the Unit.

**11.4 Maintenance Standards and Interpretation.** Except to the extent set forth in any recorded instrument set forth in this Master Deed, the maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Master Deed may vary from one term of the Board of Directors to another. These variances shall not constitute a waiver by the Board of Directors of the right to adopt and enforce maintenance standards under this Article. No decision or interpretation by the Board of Directors shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board of Directors. All maintenance of a Unit shall be in conformance with the Community Wide Standard of the Association. No Unit Owner shall perform any maintenance which may result in a change or alteration to the exterior of the Unit without the prior written approval of the Board of Directors or ARC as provided herein.

**11.5 Measures Related to Insurance Coverage.** The Board, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Condominium Property which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Condominium Property, reduce the insurance premium paid by the Condominium Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Unit Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Unit Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install and maintain smoke detectors; requiring Unit Owners to make improvements to the Owner's Unit; and such other measures as the Board may reasonably require so long as the cost of such work does not exceed five hundred dollars (\$500.00) per Unit in any twelve (12) month period. In addition to, and not in limitation of, any other rights the Condominium Association may have, if any Unit Owner does not comply with any reasonable requirement made by the Board pursuant to this Article 11.5 above, the Condominium Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Unit Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this Article 11.5, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Unit Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

## ARTICLE 12: CASUALTY LOSSES

**12.1 Damage to Common Elements.** In the event of the loss of or damage solely to the Common Elements, which loss or damage is covered by the fire and casualty insurance, the proceeds from such insurance shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such Common Elements, then such excess insurance proceeds shall be placed in the Capital Fund. If it appears that the insurance proceeds covering the fire and casualty loss or damage are insufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will be insufficient, then the Board shall make up the deficiency from the Capital Fund, and if the sum in such Capital Fund is insufficient, then the Board shall levy and collect an assessment against all of the Unit Owners in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

**12.2 Damage to Common Elements and Units.** In the event of the loss of or damage to the Common Elements and any Unit or Units, which loss or damage is covered by the fire and casualty insurance, the proceeds from such insurance shall be first applied to the repair, replacement or reconstruction, as the case may be, of the Common Elements, and then any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of any Unit or Units which may have sustained any loss or damage so covered. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the Common Elements and the Unit or Units sustaining any loss or damage, then such excess insurance proceeds shall be placed in the Capital Fund. If it appears that the insurance proceeds covering the fire and casualty loss or damage are insufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will be insufficient, then the Board shall, based upon reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction between the Common Elements and the Unit or Units sustaining any loss or damage. If the proceeds of said fire and casualty insurance are sufficient to pay for the repair, replacement or reconstruction of or damage to the Common Elements, but are insufficient to repair, replace or reconstruct any loss of or damage to any Unit or Units, then the Board shall levy and collect an assessment from the Unit Owner or Unit Owners of the Unit or Units sustaining any loss or damage sufficient to completely pay for the repair, replacement or reconstruction of the Common Elements and the Unit or Units. In said latter event, the assessment to be levied and collected from the Unit Owner or Unit Owners of each Unit or Units sustaining loss or damage shall be apportioned between such Unit Owner or Unit Owners in such a manner so that the assessment levied against each Unit Owner of a Unit and his/her Unit shall bear the same ratio to the total assessment levied against all of said Unit Owners of Units sustaining loss or damage as the cost of repair, replacement or reconstruction of each Unit Owner's Unit bears to the cost applicable to all of said Units sustaining loss or damage, unless the deficiency is due to the application of the second paragraph of Article 10.7 hereof (under which a Unit Owner may be liable for increased insurance premiums), in which event the Unit Owner responsible for such deficiency and his/her Unit shall be separately assessed. If the fire and casualty insurance proceeds in the event of the loss of or damage to the Common Elements and Unit or Units are insufficient to pay for the complete repair, replacement or reconstruction of the Common Elements, it being recognized that such insurance proceeds are to be first applied to payment for repair, replacement or reconstruction of said Common Elements before being applied to payment for repair, replacement or reconstruction of Unit or Units, then the cost to repair, replace or reconstruct said Common Elements in excess of available fire and casualty insurance proceeds shall be levied and collected as an assessment from all of the Unit Owners of all Units in the same manner as would such assessment be levied and collected had the loss or damage sustained been solely to the Common Elements and the fire and casualty insurance proceeds been insufficient to cover the cost of repair, replacement or reconstruction, and the cost of repair, replacement

or reconstruction of each Unit or Units sustaining loss or damage shall then be levied and collected by assessment of the Unit Owner or Unit Owners of Unit or Units sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between the Unit Owner or Unit Owners of Unit or Units sustaining such loss or damage.

**12.3 Procedures.** In the event of loss of or damage to the Property covered by such fire and casualty insurance, the Board shall, within sixty (60) days after any such occurrence, return the damaged Property to a condition as good as that before such loss or damage. Whenever it shall appear that the insurance proceeds payable for such loss or damage will be insufficient to defray the cost of the repair, replacement or reconstruction of the Property lost or damaged, the additional monies required to completely pay for such repair, replacement or reconstruction, whether to be paid by all of the Unit Owners or only by the Unit Owner or Unit Owners of any Unit or Units sustaining loss or damage, or both, shall be allocated or levied by the Board not later than thirty (30) days from the date on which the Board shall receive the monies payable under the policy or policies of fire and casualty insurance.

**12.4 Small Losses: Personal Procedure.** In the event of loss of or damage to Common Elements which are personal property, and in the event that the Board determines not to replace all or part of such personal property as may be lost or damaged, then the insurance proceeds applicable thereto shall be paid by the Board to all Unit Owners and their respective Lenders, as their interests may appear, in the manner and in the proportions hereinabove provided or, at the election of the Board, such insurance proceeds may be held by the Board for the future replacement of the personal property lost or damaged or may be retained and placed in the Capital Fund or may be used for the purpose of reducing the Common Expense of the Board, or may be used as the Board shall deem advisable.

**12.5 Contracts for Repairs.** Contracts for repair, replacement or reconstruction of loss or damage shall be made by the Board in the name of the Association.

**12.6 Insurance Trustee's Disbursements.** In the event that the Board has established an Insurance Trust, the terms and provisions of the Insurance Trust Agreement shall control the disbursement of funds by the Insurance Trustee. The Insurance Trustee shall not disburse any funds for repair, replacement, or reconstruction until such funds on deposit with the Insurance Trustee equal the estimated cost of repair, replacement, or reconstruction.

**12.7 Board Disbursements.** If the Board receives insurance proceeds, the Board shall not disburse any funds for repair, replacement, or reconstruction until such funds on deposit with the Board equal the estimated cost of repair, replacement, or reconstruction. If appropriate, the Board will retain an architect to supervise the repair, replacement, or reconstruction. The Board shall require with each request for a disbursement to a contractor for such repair, replacement, or reconstruction the following:

- (a) Proof of payment of all costs of labor and materials except for those costs for which the disbursements is requested;
- (b) A statement certifying (A) that the repair, replacement, or reconstruction (as the case may be) to the date of the certificate is in compliance with the plans and specifications therefore; (B) the percentage of completion to the date of the certificate; and (C) that the remaining funds will be sufficient to complete the repair, replacement, reconstruction; and
- (c) If an architect has been retained, the approval of the architect for the disbursement.

## ARTICLE 13: EMINENT DOMAIN

**13.1 Procedures.** If all or any part of the Property (excluding personalty) is taken or threatened to be taken by eminent domain, the Board is authorized and directed to proceed as follows:

(a) To obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Board in its discretion deems necessary or advisable, to aid and advise it in all matters relating to such taking and its effect, including, but not limited to (A) determining whether or not to resist such proceedings or convey in lieu thereof, (B) defending or instituting any necessary proceedings and appeals, (C) making any settlements with respect to such taking or attempted taking, and (D) deciding if, how and when to restore the Property;

(b) To negotiate with respect to any such taking, to grant any permits, licenses and releases, to convey all or any portion of the Property, and to defend or institute, and appeal from, all proceedings as it may deem necessary or advisable in connection with the same; and

(c) To have and exercise all such powers with respect to such taking or proposed taking and restoration as those vested in boards of directors or corporations with respect to corporate property, including but not limited to purchasing, improving, demolishing and selling real estate.

**13.2 Unit Owners and Lenders.** Each Unit Owner and each Lender shall be given reasonable written advance notice of all final offers before acceptance, proposed conveyances, settlements and releases contemplated by the Board, legal proceedings and final plans for restoration, and reasonable opportunity to be heard with respect to each of the same, and to participate in and be represented by counsel in any litigation and at all hearings, at such Unit Owner's or Lender's own expense.

**13.3 Compensation Fund.** The Board shall be reimbursed for all attorneys', engineers', architects' and appraisers' fees, costs and expenses paid or incurred by it in preparation for and in connection with, or as a result of, any such taking, out of the compensation, if any, by whomsoever received, for any such taking, or for any conveyance in lieu thereof, and the net amount of such compensation shall be deposited into a fund for the Unit Owners and pooled. Such compensation, together with any amounts added thereto as provided hereinafter, is sometimes hereinafter called the "Compensation Fund" and shall be allocated and used, or distributed by, or at the direction of, the Board as follows:

(a) Any portion of such Compensation Fund specifically designated and determined by the court having jurisdiction over the eminent domain proceedings (the "Court"), or, if not, by the Board, to have been paid by the condemnor for reasonable and necessary moving expense, additional refinancing expense, relocation expense, attorneys' fees, litigation costs and expenses, or other costs or expenses, individually incurred by any Unit Owner or lienor, shall first be allocated and paid to the persons who incurred same.

(b) If all of the Property is taken, this horizontal property regime shall terminate as of the date of taking and the balance of the Compensation Fund shall be distributed among the Unit Owners in proportion to their respective undivided percentage interests in the Common Elements at the time of the taking by, or conveyance to, the condemnor. If there is a Recorded Mortgage on any Unit to secure any indebtedness, distribution with respect to such Unit shall be by check payable jointly to the Unit Owner of the Unit and the lender holding the Recorded Mortgage.

(c) If not all of the Property is taken and the remainder thereof cannot, or, in the opinion of the Unit Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and of the lenders who represent at least fifty-one percent (51 %) of the votes of Units that are subject to Mortgages, should not be continued as a common enterprise, whether for physical reasons, lack of sufficient remaining Units, expense or other reasons, this horizontal property regime shall terminate as of the date of taking, except to the extent necessary to wind up the affairs of the regime as provided herein, and the remaining Units and Common Elements shall be sold by the Board for the best prices reasonably obtainable, at public or private sale, and the amount thus obtained, less sales expense, shall be pooled and added to the Compensation

Fund, the balance of which shall then be distributed among the Unit Owners and their Lenders, if any, in the proportions and manner specified in subparagraph (b) of this Article. The respective Unit Owners of Units, or portions thereof, thus to be sold shall have a first refusal option to purchase, and thus, if practicable, retain their own Units and purchase fee simple interests in Common Elements of sufficient nature and extent to enable their respective Units to be reasonable tenantable and habitable. Such refusal option shall be given and exercised as follows:

The Board shall notify each such Unit Owner in writing, sent by certified mail to his/her last address known to the Board, of the price at which it will offer the Unit Owner's Unit or what is left of it, of what former Common Elements will be sold with such Unit as appurtenances thereto, and any other substantive matters relating to the proposed sale, and such Unit Owner shall have the right within fifteen (15) days after the mailing of such notice to exercise his/her option to purchase such Unit and appurtenances at a specific price by notice of such acceptance delivered to the Board, accompanied by a deposit of ten percent (10%) of the offering price, whereupon such Unit Owner shall be entitled and obliged to purchase, and the Board shall be entitled and obliged to sell to him/her, such Unit and appurtenances at said price and upon the terms specified in the notice. If such Unit Owner shall not exercise such option as aforesaid, the Board shall be free to sell the Unit and such appurtenances to whomsoever it elects without any further option or other rights in favor of such Unit Owner but shall not sell the same at any lower price or more favorable terms without again giving such Unit Owner the same right of refusal in the same manner.

(d) If, in the opinion of the Board, the remainder of the Property can be and should be continued as a common enterprise, the following provisions shall be applicable:

(i) The respective net amount by which the fair cash market value of each Unit has been diminished, if any, at the time of and by reason of such taking shall be determined.

(ii) The amount allocated to each Unit which in the judgment of the Board is not restorable or replaceable shall be distributed from the Compensation Fund (together with the fair cash market value, at time of taking by the condemnor, of the remainder of such Unit, and any remaining interests appertaining to such Unit in any portion of the Property) by joint check, to each Unit Owner of, and Lender of Lenders with a Recorded Mortgage on, each such Unit in return for conveyance of such remainder and remaining interests to the Board which shall hold same for and on behalf of the Unit Owners. Such conveyance shall convey good and marketable title, free and clear of any encumbrances.

(iii) The balance of the Compensation Fund shall next be used to such extent and in such manner as the Board shall determine for the restoration and replacement of Common Elements and then for the restoration and replacement of the affected Units, all in keeping with the character of the Property as a whole, and the Board is authorized and directed to hire, and be reimbursed out of the Compensation Fund for payment to, all such architects, engineers, builders and other persons, if any, whom it deems necessary or advisable to plan and effectuate such restoration and replacement. The remaining amount, if any, in the Compensation Fund after payment for such restoration and replacement shall be distributed to the Unit Owners of, and lenders with a Recorded Mortgage on, the Units that have not been eliminated and which have suffered diminution as above determined, to compensate such Unit Owners for any diminution remaining, after taking into account the effects of such restoration or replacement in the market value of their Units and, so that as near as may be possible, each remaining Unit Owner will be proportionately as well off as before the taking; provided that

compensation distributed to a Unit Owner for diminution in value shall in all such cases be made only upon a simultaneous and equitable adjustment in such Unit Owner's undivided percentage interest in the Common Elements.

(iv) If any Unit shall have been specially benefited by the taking, or by any such restoration or replacement, the Unit Owner thereof and his/her Unit shall be debited, charged or assessed by the Board in favor of the Compensation Fund for the amount by which, in the Board's judgment, the fair cash market value of his/her Unit has been enhanced due to such taking or due to such restoration or replacement. Thereafter, the Unit Owner and his/her Unit shall receive and accept a correspondingly acceptable adjustment in such Unit Owner's undivided percentage interest in the Common Elements.

(v) If, after all such payments, distributions, replacement and restoration costs, and other expenses and all such debits, charges and assessments, there should remain any surplus in the Compensation Fund, the same shall be placed in the Reserve Fund or at the option of the Board, distributed to the Unit Owners in proportion to their respective percentage interests in the Common Elements. If there is any shortage, the same shall be assessed to the remaining Unit Owners in the same manner as Common Expenses.

**13.4 Board's Power.** The Board is hereby appointed as attorney-in-fact for each Unit Owner to convey any Unit Owner's and lender's interest in lieu of condemnation or in connection with restoration and replacement and to make any other conveyances and to execute, acknowledge, deliver and Record any and all instruments deemed necessary or advisable in connection with the subject matter of this Article, including, without limitation, amendments to this Master Deed and/or the Plat to reflect a taking and its resulting effect on the remaining Unit Owners' undivided percentage interests in the Common Elements, and is hereby authorized and empowered to take all such steps and do all such things as in its judgment may be necessary or advisable to effectuate and implement the powers granted to it hereunder.

**13.5 Execution of Documents.** Each Unit Owner and lender shall, upon request, execute, acknowledge and deliver to the Board or to such person(s) as the Board may specify, all such instruments and documents as may be reasonably necessary to effectuate and implement this Article, and shall do all such other things reasonably necessary or incidental to the specific requirements of this Article.

**13.6 Determination of Value.** All determinations of value, changes in value, restorability, replaceability, damages, benefits, proper proportions, allocations and other matters necessary for the administration of the provisions of this Article shall, to the extent not finally determined by the Court in the applicable condemnation proceedings, if any, be made impartially, reasonably and in good faith by a majority of the Board who shall act as fiduciaries and shall endeavor at all times to deal equitably with each respective Unit Owner, any Lender and other person having any legal or equitable interest in the Property, or any portion thereof. No member of the Board shall vote on the amount to allocate to his/her own Unit, any amount to be paid, credited or charged to him/her, or shall vote on whether or not a Unit owned by him/her shall be restored or replaced.

**13.7 Termination of Regime.** The word "taken" as used in this Article shall include the word "damaged." In the event of termination of the horizontal property regime as herein provided, the filial estates shall be deemed merged into and become a part of the Property and the Property shall be subject to partition at the suit of any Unit Owner, and with the exception for the first refusal rights of Unit Owners hereunder, the Master Deed, Bylaws and Plat shall cease to apply.



## **ARTICLE 14: ARCHITECTURAL CONTROL**

**14.1 Architectural Standards.** Except for the Declarant and except as provided herein, no Unit Owner, Occupant, or any other person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, antenna, light (except for reasonable seasonal decorative lights, which may only be displayed for and during the appropriate season), storm door or window, artificial vegetation, exterior sculpture, fountain, flag, or thing on the exterior of the buildings, in any windows, on any Limited Common Elements, or any other Common Elements, without first obtaining the written approval of the Mulberry Park Architectural Review Committee ("ARC"), as established in the Declaration.

The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings and the location in relation to surrounding structures, topography, and compliance with the Design Code. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ARC may reasonably require. The ARC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board of Directors or the ARC may publish written architectural standards for exterior and Common Elements alterations or additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing buildings and Units and the location in relation to surrounding structures and topography. The Architectural Review Board may allow such encroachments on the Common Elements and Limited Common Elements, as it deems acceptable.

In the event that the ARC fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the ARC may reasonably require has been submitted, its approval will not be required and this Article will be deemed complied with; provided however, even if the requirements of this Article are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Master Deed, the Declaration, the Design Code, the Bylaws, or the rules and regulations.

**14.2 Architectural Review Committee.** The ARC shall have exclusive jurisdiction over all construction on any portion of the Condominium Property. Per the Declaration, for so long as the Declarant owns any portion of the Condominium Property or has the unilateral right to annex additional property to the Condominium Property, the Declarant retains the right to appoint and remove all members of the ARC, who shall serve at the Declarant's discretion. There shall be no surrender of these rights prior to their expiration as provided above, except in a written instrument in recordable form executed by Declarant; provided, however, that Declarant may delegate certain authority of the ARC to the Condominium Association for such periods of time as Declarant in its sole discretion may decide.

**14.3 Condition of Approval.** As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of such change, modification, addition, or alteration. In the discretion of the ARC, an Owner may be required to verify such condition of approval by written instrument in recordable form acknowledged by such Owner.

**14.4 Limitation of Liability.** Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, the Board of Directors, nor the Architectural Review Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, the Architectural Review Committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Unit.

**14.5 No Waiver of Future Approvals.** Each Unit Owner acknowledges that the members of the Board of Directors and the Architectural Review Committee will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board of Directors or the Architectural Review Committee of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors or the Architectural Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

**14.6 Enforcement.** Any construction, alteration, or other work done in violation of this Section shall be deemed to be nonconforming. Upon written request from the ARC, or from the Board of Directors, if said authority has been delegated by the Declarant to the Association or Declarant's rights have been surrendered, Unit Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should a Unit Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the Unit and collected as an assessment pursuant to this Master Deed. In addition to the foregoing, the ARC shall have the authority and standing, on behalf of the Condominium Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions. Any exterior change, alteration, or construction (including landscaping) upon the Common Elements made by a Unit Owner in violation of this Master Deed shall be at such Unit Owner's sole risk and expense. The ARC may require that the Unit Owner remove the change, alteration, or construction and restore the Common Elements to its original condition, or may require that the change, alteration or construction remain on the Common Elements without reimbursement to the Unit Owner for any expense incurred in making the change, alteration or construction.

## **ARTICLE 15: USE RESTRICTIONS**

**15.1 Overview.** The Property shall be used only for residential; recreational; and related business and commercial purposes, which purposes may include, without limitation, offices for any property manager retained by the Condominium Association or business, sales, or real estate offices for Declarant or the Association and other businesses which serve and are a part of the Community, as may more particularly be set forth in the Documents and any amendments thereto. The Association and/or the Condominium Association, acting through its Board of Directors, shall have standing and the power to enforce such standards. The Association and/or the Condominium Association, acting through its Board of Directors, shall have authority to make, and the Association and/or the Condominium Association, acting through its Board of Directors shall have the authority to enforce, standards and restrictions governing the use of the Property in addition to those contained herein and in the Community-Wide Standards (as defined in

the Declaration). Such regulations and use restrictions shall be binding upon all Unit Owners, occupants, invitees and licensees. Notwithstanding anything to the contrary herein, Declarant shall be exempt from application of the provisions of this Article.

**15.2 Adoption of Use Restrictions Contained in the Declaration.** The Use Restrictions contained in Article V of the Declaration are herein incorporated by reference, except as modified herein, in Article 15.3. The following additional use restrictions apply:

(a) **Use of Common Elements.** There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on, or removed from any part of the Common Elements without the prior written consent of the Board, except as specifically provided herein. This prohibition shall not apply to the Declarant. With the prior written approval of the Board, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Elements for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Elements as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Elements and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

(b) **Use of Limited Common Elements.** Use of the Limited Common Elements is restricted exclusively to the Owners of the Unit to which such Limited Common Elements are assigned, and said Owner's family members, guests, invitees, and Occupants. The Limited Common Elements are reserved for exclusive use, but are a part of the Common Elements, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.

(c) **Prohibition of Damage, Nuisance and Noise.** Without the prior written consent of the Board, nothing shall be done or kept on the Condominium, or any part thereof, which would increase the rate of insurance on the Condominium or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

Noxious, destructive or offensive activity shall not be carried on upon the Condominium. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the Condominium at any time, in any way or for any purpose which may endanger the health or unreasonably annoy or disturb or cause embarrassment, discomfort, or nuisance to other Owners or Occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights. Notwithstanding anything to the contrary herein, no Owner or Occupant of a Unit may use or allow the use of the Unit, the Common Elements or the Limited Common Elements in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Unit that will, in the sole discretion of the Board, interfere with the rights, comfort or convenience of the other Owners or Occupants.

No Owner shall do any work which, in the reasonable opinion of the Board or its designee, would jeopardize the soundness or safety of the Condominium or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without in every such case the unanimous, prior written consent of all members of the

Association and their Mortgagees. No damage to or waste of the Common Elements, or any part thereof, or of the exterior of any building shall be permitted by any Owner or member of his or her family or any invitee or guest of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

(d) **Heating of Units in Colder Months.** In order to prevent breakage of water pipes during colder months of the year resulting in damage to any portion of the Condominium, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of fifty-five (55) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two (32) degrees Fahrenheit or below. Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Unit Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. The Board of Directors may fine any Owner or Occupant and/or may cause the water service to the violators Unit to be discontinued for violation of this subsection, in addition to any other remedies of the Association. Any fine imposed pursuant to this subsection shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for collection of assessments.

(e) **Impairment of Units and Easements.** An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Unit or impair any easement or other interest in real property, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners or Occupants.

(f) **Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Condominium. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

(g) **Time Sharing.** Notwithstanding anything herein to the contrary, no Unit shall be used for or subject to any type of time sharing program, as defined in Tennessee Code Annotated, Section 66-32-102, et seq., as amended, or any subsequent laws of the State of Tennessee dealing with a vacation time share ownership or leasing plan, unless the Owner of said Unit has obtained the prior written approval of the Board and, for so long as the Declarant owns a Unit, the prior written consent of the Declarant.

(h) **Window Treatments.** The interiors and exteriors of all windows forming part of a perimeter wall of a Unit or Limited Common Elements appurtenant to a Unit shall be cleaned and washed at the expense of the Unit Owner of that Unit, and no Unit Owner shall decorate such window interiors, either with draperies, shutters, curtains, window shades, tinting, or other coverings or accessories, in any manner which detracts from the appearance of the Buildings, and the determination of the ARC on such matters shall be final.

(i) **Patios and Exterior Decorations.** No Unit Owner shall enclose the patio of his/her Unit or any part thereof, without having first obtained the prior written approval of the ARC with

respect to the materials, plans and specifications for such enclosure. No Unit Owner shall decorate the portions of such balcony, deck, or patio visible from outside such Unit in any manner that detracts from the appearance of the Buildings, and the determination of the ARC on such matters shall be final. No Unit Owner shall decorate any portion of the exterior of the Units without having obtained the prior written approval of the ARC unless such decorations are in conformity with the Design Code.

(j) **Subdividing of Units.** No Unit may be divided or subdivided into a small Unit or smaller Units, nor shall any Unit, or portion thereof, be added to or incorporated into any other Unit except that if a Unit Owner acquires an adjoining Unit, then such Unit Owner shall have the right to remove all or any part of any intervening partitions or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a Common Element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any Common Element other than that partition is damaged, destroyed, or endangered. Such combination of Units and/or such creation of doorways or other apertures shall not be deemed a combination of Units or an alteration of boundaries and each Unit shall be and remain a separate and distinct Unit. The undivided interest in the Common Elements declared to be an appurtenance to each Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Unit and the undivided interest in Common Elements appurtenant to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any instrument conveying, devising, encumbering, or otherwise dealing with any Unit, which describes said Unit by the Unit numerical designation assigned thereto in the Plat, shall be deemed and construed to affect the Unit and its appurtenant undivided interest in the Common Elements. The description in any instrument conveying, devising, encumbering, or otherwise dealing with any Unit and describing the Unit by its Unit numerical designation and describing the Unit by its Unit numerical designation and identifying this Master Deed shall be deemed to include any and all amendments and supplements to this Master Deed and to the Plat and Bylaws herein identified, and it shall not be necessary for such description specifically or generally to refer to any such amendment or supplement. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety. If any doorway or other aperture created is subsequently returned to its use as a dividing wall or intervening partition, all construction must be of the quality of the original Unit construction and meet the applicable building codes.

**15.3 Stricter Standards.** The following stricter standards shall apply to the Condominium Property:

- (a) **Accessory Structure.** No doghouses, tool sheds or other outbuilding/structure of a similar kind or nature are permitted on any part of the Condominium Property.
- (b) **Animals and Pets.** No animals, reptiles, livestock, wildlife or poultry or any kind shall be raised, bred or kept on any portion of the Condominium Property, except that a Unit Owner may keep a maximum of two (2) usual and common household pets. Usual common household pets include dogs, cats, hamsters, parakeets, gerbils, etc. Each pet may not weigh more than 30 lbs. However, a new Unit Owner may bring a pet weighing more than 30 lbs. if the Unit Owner owned the pet prior to the Unit Owner's execution of the Purchase and Sale Agreement for

his/her Unit. When the pet weighing more than 30 lbs. passes away, it may not be replaced with a pet which would have an adult weight of more than 30 lbs.

Those pets which are permitted to roam free, or which, in the sole discretion of the Board of Directors of either the Association or the Condominium Association, endanger the health and safety of the Members of the Association, make objectionable noise, or constitute a nuisance or inconvenience to the other Members of the Association shall be removed upon request of the Board of Directors of either the Association or the Condominium Association. If the Owner fails to honor such request, the pet may be removed by the Board of Directors of either the Association or the Condominium Association. No pets shall be kept, bred or maintained for any commercial purpose. Household pets shall at all times whenever they are outside the Owner's Unit be confined on a leash held by a responsible person. In addition, the owner of the pet or the person responsible for the pet must remove any of the pet's feces left upon the Common Areas and Lots owned by other Owners.

**(c) Artificial Vegetation, Exterior Decorations and Similar Items.** No artificial vegetation shall be permitted to exist on the exterior of any Unit or on the Common Elements (including, but not limited to, on patios and/or porches, or in window boxes and/or exterior planters). Exterior decorations, including without limitation, sculptures, fountains, flags, and similar items are only allowed on patios and must be approved in writing by the ARC.

**(d) Garbage Cans, Tanks, Etc.** Garbage cans, storage tanks, mechanical equipment, including, without limitation, electrical meters, gas meters and air conditioning compressors, or other similar items shall be stored in the Owner's garage. All rubbish, trash, and garbage shall be stored in appropriate containers with lids. On days designated for trash collection, garbage cans must be removed from the street within 12 hours of trash collection. Garbage cans may only be placed on the street after 5 p.m. on the day prior to collection. Clotheslines shall not be permitted.

**(e) Playground, Play Equipment, Strollers, etc.** All bicycles, tricycles, scooters, skateboards, goals, and other play equipment, wading pools, baby strollers and similar items shall be stored so as not to be visible from streets or property adjacent to the Unit. No such items shall be allowed to remain in the open so as to be visible from adjacent property when not in use. Swings sets, jungle gyms, trampolines, other permanent types of playground equipment, and basketball goals are not permitted on the Common Elements. Notwithstanding the above, Declarant and/or the Association may, but shall not be obligated to, permit and/or install playground equipment, basketball goals and similar permanent playground equipment to be erected within the Common Areas. Any playground or other play areas or equipment furnished by the Association or erected within the Community shall be used at the risk of the user, and neither Declarant nor the Association shall be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

**(f) Pools.** No aboveground pools shall be erected, constructed or installed on any portion of the Common Elements, except for the Neighborhood's pool. Above ground spas and Jacuzzis are permitted on patios, but they are required to be located or screened so as to be concealed from view of neighboring Lots/Units and streets and must be approved by the ARC.

**(g) Signs and Flagpoles.** No signs or advertisements of any kind shall be placed in any window or outdoors. Neither owners nor real estate agents may post signs of any kind, either outdoors or

in windows. No flagpoles shall be erected. The only type of flag which may be displayed is the flag of the United States of America, and the Design Code shall set forth the guidelines for the manner in which the flag may be displayed.

#### **ARTICLE 16: EASEMENTS AFFECTING THE PROPERTY**

Without hereby limiting the Board's authority to grant easements from time to time with respect to parts of the Common Elements as set forth herein, each Unit Owner shall take title to his/her Unit subject to, and the rights of the Unit Owners to use the Common Elements shall be subject to, the following:

(a) **Encroachments.** If any portion of the Common Elements encroaches or shall hereafter encroach upon any Unit, or any Unit encroaches or shall hereafter encroach upon any portion of the Common Elements or any other Unit, there are hereby granted and reserved mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved, to the extent of such encroachment, so long as the same shall exist; provided, however, that no such easement shall arise in favor of any Unit Owner if the encroachment interferes with the structural integrity of any of the Common Elements or the use and enjoyment thereof by other Unit Owners; and provided further that no such easement shall arise in favor of any Unit Owner who creates an encroachment by his/her intentional or negligent conduct, or that of his/her agent.

(b) **Utility Services.** All suppliers of utilities, including cable TV and sprinkler systems, serving the Property may be granted non-exclusive easements at the discretion of the Board to install, lay, construct, operate, maintain, renew, repair and replace conduits, ducts, cables, pipes and wires and other equipment or structural components in, to, over, under, across and through any portion of the non-livable space or walls of a Unit (whether or not such walls lie in whole or in part within the Unit boundaries) for the purpose of providing the Property with utility services, together with the reasonable right of ingress to and egress from the Property or any part thereof for said purpose. In addition the Board, at its discretion, may grant such other easements as the Board may deem desirable.

#### **ARTICLE 17: SALE OR LEASE OF A UNIT**

**17.1 Transfer or Lease to Family Members.** With the exception of Article 17.2 below (unless otherwise specified), this Article 17 shall not apply to the transfer or lease of a Unit by a Unit Owner to such Unit Owner's spouse, child, parent, grandparent, brother, sister, grandchild or descendant, or jointly to any of the foregoing enumerated family members of a Unit Owner and their respective spouses (all of the foregoing hereinafter collectively, "Family Members"), or to anyone or more of them, or to any trustee of a trust, the sole beneficiary of which is the Unit Owner or his/her Family Members or anyone or more of them, or to any partnership of which the Unit Owner or his/her Family Members or anyone or more of them are partners. It is provided, however, that notice of such transfer or lease shall be given by the Unit Owner to the Board within ten (10) days following the consummation of such transfer or lease.

**17.2 Leases.** No lease of a Unit may be executed which provides for a lease term of less than six (6) months. A copy of any lease of a Unit or interest therein, as and when executed, shall be furnished to the Board, and the lessor shall furnish the lessee with a copy of the Master Deed and the Declaration. The lessee under every such lease shall be bound by and subject to all of the obligations under the Master Deed, Documents and Bylaws of the Unit Owner making such lease, and the lease, if any, shall expressly so provide. The Unit Owner making such lease shall not be relieved thereby from any of said obligations.

Upon the expiration or termination of such lease, or in the event of any attempted assigning or subleasing thereunder, the provisions of this Article 17 shall again apply to said Unit or interest therein.

**17.3 Notice of Sale or Lease.** For purposes of maintaining accurate information and records concerning residents and ownership of the Units, whenever a Unit Owner shall propose to sell or lease [such lease to be in accordance with Article 17.2 above] his/her Unit, or any interest therein, whether or not pursuant to arms length negotiations, to any Person or entity other than a Person or entity described in Article 17.1 above, said Unit Owner shall give the Board written notice thereof prior to the proposed sale or lease, which notice shall briefly describe the type of sale or lease proposed by the Unit Owner and shall state the name, address, and occupation or employment, if any, of the proposed purchaser or lessee. The notice shall also include a copy of the proposed lease or contract for sale and other documents effecting said sale or lease and all pertinent terms and conditions of such sale or lease. Such documentation shall include evidence that the Unit Owner has received a bona fide offer for such sale or lease, a bona fide offer being defined herein as an offer in writing, binding upon the offeror, and containing all of the pertinent terms and conditions of such sale or lease.

**17.4 Sale or Lease by Declarant.** A sale or lease of a Unit by Declarant shall not be subject to the provisions of this Article 17. Declarant reserves the right to sell or lease any unsold Unit owned by it under such terms and conditions as it shall deem proper.

**17.5 Sale, Lease or Sublease by Association.** The Association shall hold title to the fee or leasehold interest of any Unit or interest therein which has been acquired by the Association in the name of the Association or a nominee thereof delegated by the Board, for the sole benefit of all Unit Owners. The Board shall have the authority at any time to sell, lease or sublease said Unit or any interest therein on behalf of the Association upon such terms as the Board shall deem desirable, but in no event shall a Unit or interest therein be sold for less than the amount paid by the Association to purchase said Unit without the prior approval of Unit Owners representing at least seventy-five percent (75 %) of the total allocated votes in the Association.

**17.6 Rules and Regulations.** The Board may from time to time adopt rules and regulations not inconsistent with the provisions of this Article 17 for the purpose of implementing and effectuating said provisions.

**17.7 Available Remedy.** If any sale or lease of a Unit is made or attempted without complying with the provisions of this Article 17, such sale or lease shall be subject to each and all of the rights and options of and remedies and actions available to the Declarant and/or the Association.

**17.8 Assessment.** In the event of any transfer of a Unit or any interest therein, the transferee shall not be personally liable for any unpaid assessments of the transferor accrued and payable prior to the date of transfer unless the transferee agrees to assume the obligation.

**17.9 Other.** Except as otherwise restricted in this Master Decd, a Unit is freely alienable as provided by applicable law.

## **ARTICLE 18: PARTY WALLS**

**18.1 General Rules of Law to Apply.** Each wall built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

**18.2 Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Unit Owners who make use of the wall in equal proportions.



**18.3 Damage and Destruction.** If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Unit Owner or Owners who have benefited by the wall may restore it, and the Condominium Association shall reimburse said Owner(s) for the cost incurred, without prejudice, however, to the Condominium Association's right to seek reimbursement from or withhold payment to the Unit Owners or others under any rule of law or provision in this Master Deed regarding liability for negligent or willful acts or omissions.

**18.4 Right to Contribution Runs With Land.** The right of any Unit Owner to contribution from any other Unit Owner under this Article shall be appurtenant to the land and shall pass to such Unit Owner's successors-in-title.

#### **ARTICLE 19: RIGHTS OF LENDERS**

**19.1 Requests for Notice and Reports.** Upon written request (which must state the name and address of the Lender and the Unit number or address of the Unit on which it has a Mortgage) to the Board, any lender shall be entitled to:

- (a) Inspect the books and records relating to the Property during normal business hours, upon reasonable notice;
- (b) Obtain, at its own expense, an audited annual financial statement of the Association for the preceding fiscal year if there is no audited financial statement available;
- (c) Receive written notice of all meetings of the Association and designate a representative to attend all such meetings;
- (d) Receive written notice of any default in the obligations hereunder of the Unit Owner or Unit Owners of such Unit or Units encumbered by such Mortgage lien not cured within thirty (30) days after notice of such default has been sent to such Unit Owner or Unit Owners by the Association;
- (e) Receive written notice of any material amendment to this Master Deed, the Bylaws or the Charter of the Association;
- (f) Receive written notice of any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- (g) Receive written notice of any proposed action that requires the consent of a specified percentage of Lenders.

The Association's failure to provide any of the foregoing to a Lender who has so requested same, however, shall not affect the validity of any action or decision which is related to the foregoing, nor shall the Association have any liability on account of its good faith failure to so provide.

**19.2 Notice of Casualty or Condemnation.** Upon written request to the Board, a Lender shall be entitled to timely written notice in the event of any substantial damage to or destruction of the Unit or Units, or any part of the Common Elements or, if such Unit or Units or any portion thereof, or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority. No Unit Owner or other party shall be entitled to priority over a First Mortgagee with respect to the distribution to such Unit Owner or other party, as to such Unit, of any insurance proceeds payable by reason of such damage or destruction or of the proceeds of any such condemnation award or settlement.

**19.3 Additional Rights.** The provisions hereof are in addition to all other rights of Lenders herein contained or under law.

**19.4 Notice to Secondary Market.** When notice is to be given to any Lender, the Board shall also give such notice to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guaranteeing Mortgages of Units on the Property if the Board has written notice of such participation.

**19.5 Implied Approval.** For any action requiring the approval of one or more Lenders (excluding, however, the Development Mortgagee), a Lender's approval (or affirmative vote) may be implied whenever that Lender fails to submit a response to any written proposal for an amendment or other matter within thirty (30) days after receipt of such proposal sent by certified or registered mail.

**19.6 Additional Mortgagee Rights.** Notwithstanding anything to the contrary herein contained, the provisions of Article 17 governing sales and leases shall not apply to impair the right of any first Mortgagee to:

- (a) Foreclose or take title to a Unit pursuant to remedies contained in its Mortgage; or
- (b) Take a deed or assignment in lieu of foreclosure.

## ARTICLE 20: UNIT OWNER COMPLAINTS

**20.1 Scope.** The procedures set forth in this Paragraph for Unit Owner complaints shall apply to all complaints regarding the use or enjoyment of the Property or any portion thereof or regarding any matter within the control or jurisdiction of the Association, including, without limitation, decisions of the Association, decisions of the Board of Directors of the Association, or any questions or interpretation of the provisions of the Master Deed or Bylaws.

**20.2 Procedure.** All complaints shall be made to the Managing Agent. If there is no Managing Agent, there shall be established by the Board a Grievance Committee (referred to in this Article as the "Committee") to receive and consider all Unit Owner complaints. The Committee shall be composed of the President of the Association and two other Unit Owners appointed by and serving at the pleasure of the Board of Directors.

**20.3 Form of Complaint.** All complaints shall be in writing and shall set forth the substance of the complaint and the facts upon which it is based. Complaints are to be addressed to the Managing Agent.

**20.4 Consideration by the Committee.** Within twenty (20) days of receipt of a complaint, the Managing Agent shall consider the merits of the same and notify the complainant in writing of its decision and the reasons therefore. Within ten (10) days after notice of the decision, the complainant may proceed under Article 20.5; but if complainant does not, the decision shall be final and binding upon the complainant.

**20.5 Hearing Before the Committee.** Within ten (10) days after notice of the decision of the Managing Agent, the complainant may, in writing addressed to the President of the Association, request a hearing before the Grievance Committee, which shall be established in the manner prescribed in Article 20.2. Such hearing shall be held within twenty (20) days of receipt of complainant's request. The complainant, at his/her expense, and the Committee, at the expense of the Association, shall be entitled to legal representation at such hearing. The hearing shall be conducted before at least two (2) members of the Committee and may be adjourned from time to time, as the Committee in its discretion deems necessary

or advisable. The Committee shall render its decision and notify the complainant in writing of its decision and the reasons therefore within ten (10) days of the final adjournment of the hearing. If the decision is not submitted to arbitration within ten (10) days after notice of the decision, as provided for in Article 20.7, the decision shall be final and binding upon the complainant.

**20.6 Questions of Law.** Legal counsel for the Association shall decide all issues of law arising out of the complaint, and such decisions shall be binding on the complainant.

**20.7 Questions of Fact: Arbitration.** If there shall be any dispute as to any material fact, either the Committee or the complainant may, at their option, within ten (10) days after notice of the decision as provided for in Article 20.5, submit the same to arbitration in accordance with the provisions for arbitration adopted by the American Arbitration Association by filing with the other Party a notice of its intention to do so. The decision of the arbitrator shall be final and binding upon the complainant and the Committee. In the event of arbitration, each party shall bear one-half of the expense thereof.

**20.8 Exclusive Remedy.** The remedy for Unit Owner complaints provided herein shall be exclusive of any other remedy, and no Unit Owner shall bring suit against the Committee, the Association, the Board of Directors or any member of same in his/her capacity as such member without first complying with the procedures for complaints herein established.

**20.9 Expenses.** All expenses incurred by complainant, including, without limitation attorneys' fees and arbitration expenses and the like, shall be the sole responsibility of complainant. All expenses of the Committee incident to such complaint shall be deemed a Common Expense of the Association.

## ARTICLE 21: DECLARANT'S RIGHTS

**21.1 Purpose.** The purpose of this Article 21 is to set forth certain Declarant rights, and to refer, for ease of reference to, certain other Declarant rights set forth in this Declaration. The purpose of this Article 21 shall in no way be a limitation of any rights of Declarant otherwise set forth in this Declaration.

**21.2 Duration of Rights.** The rights of Declarant set forth in this Declaration shall extend for a period of time ending when Declarant no longer owns any portion of the Property comprising Mulberry Park as a whole or such earlier date as determined by Declarant, in its sole discretion.

**21.3 Declarant's Rights in the Association.** Prior to and after the turnover of the Association to the Owners and until Declarant no longer owns any portion of the Property or the Additional Land, the Board shall have no authority to, and shall not, without the written consent of Declarant, which may be withheld for any or no reason whatsoever, undertake any action which shall:

- (a) Prohibit or restrict in any manner the sales and marketing program of Declarant, or the leasing activities of Declarant;
- (b) Decrease the level of maintenance services of the Condominium Association performed by the Board of Directors;
- (c) Change the membership of the ARC or diminish its powers as stated herein;
- (d) Alter or amend this Declaration, the Charter or the Bylaws;
- (e) Terminate or waive any rights of the Condominium Association under this Declaration;
- (f) Convey, lease, mortgage, alienate or pledge all easements, Common Elements or Limited Common Elements;
- (g) Accept the conveyance, lease, mortgage, alienation or pledge of any real or personal property to the Condominium Association;

- (h) Terminate or cancel any easements granted hereunder or by the Condominium Association;
- (i) Terminate or impair in any fashion any easements, powers or rights of Declarant hereunder;
- (j) Restrict Declarant's rights of use, access and enjoyment of any of the Condominium Property; or
- (k) Cause the Condominium Association to default on any obligation of it under any contract or this Declaration.

In any such matter, Declarant's consent shall be exercised by its representative on the Board or other Person designated to so act by Declarant.

**21.4 Right of Declarant to Disapprove Actions.** From the date of turnover of the Condominium Association by Declarant to the Unit Owners and until the Declarant no longer owns any portion of the Condominium Property, Declarant shall have a right to disapprove actions of the Board and any committees, as is more fully provided in this Article. This right shall be exercisable only by Declarant, its successors and/or assigns who specifically take this power in a recorded instrument, or who becomes a successor Declarant pursuant to a recorded assignment or court order. No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy or program be implemented until ten (10) days following Declarant's receipt of notice of the action taken at the meeting held pursuant to the terms and provisions hereof. At any time prior to the expiration of such ten (10) day period, Declarant may exercise its right to disapprove actions of the Board and any committees and the Condominium Association shall not take any action or implement any policy, program or rule or regulation previously approved by the Condominium Association.

This right to disapprove shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Condominium Association. Declarant shall not use its right to disapprove to reduce the level of services which the Condominium Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

**21.5 Recognition by Unit Owners of Declarant's Rights to Develop and Construct Improvements on the Property.** Each Unit Owner on his, her or its own behalf and on behalf of such Owner's heirs, personal representatives, successors, mortgagees, lienors and assigns acknowledges and agrees that the completion of the development of the Condominium Property may occur over an extended period of time and that incident to such development and the construction associated therewith the quiet use and enjoyment of the Condominium Property and each portion thereof may be temporarily interfered with by the development and construction work occurring on those portions of the Condominium Property. Each Unit Owner, on behalf of such Unit Owner's heirs, personal representatives, successors, mortgagees, and lienors does hereby waive all claims for interference with such quiet enjoyment and use as a result of the development and construction of any portion of the Condominium Property. Each Unit Owner on behalf of such Unit Owner's heirs, personal representatives, successors, mortgagees, lienors and assigns agrees that the development, construction and completion of the Condominium Property may interfere with such Unit Owner's original and existing views, light and air and diminish the same and each such Owner or such Owner's behalf and on behalf of such Owner's heirs, personal representatives, successors, mortgagees, and lienors does hereby release Declarant and its successors in interest and others involved from all claims that they may have in connection therewith.

**21.6 Declarant's Rights in Connection with Development.** The completion of the sale, resale, rental and other disposal of Units are essential to the establishment and welfare of the Condominium Property. In order that said work may be completed and the Condominium Property established as rapidly as possible, neither the Condominium Association nor any Unit Owner shall do anything to interfere with

Declarant's activities. Without limiting the generality of the foregoing, nothing in this Master Deed or the Articles or the Bylaws or any amendment thereto shall be understood or construed to prevent Declarant, its successors or assigns, or its or their contractors or subcontractors and their representatives from:

- (a) Doing on any property owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development (all models or sketches showing plans for future development may be modified by Declarant at any time and from time to time, without notice); or
- (b) Erecting, constructing and maintaining on any property owned or controlled by Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing Collier Place at Mulberry Park as a condominium community and disposing of the same by sale, lease or otherwise; or
- (c) Conducting on any property owned or controlled by Declarant or its successors or assigns, its or their business of developing, subdividing, grading and constructing improvements on such property and of disposing of Units therein by sale, resale, lease or otherwise.

Declarant expressly reserves the right to grant easements and rights-of-way over, under and through the Common Elements so long as Declarant owns any portion of the Condominium Property primarily for development and/or resale, provided no such easement shall materially interfere with the use of Common Elements by the Members.

**21.7 Future Easements and Modifications.** Declarant reserves the right to grant, modify or enter into easements, dedications, agreements, licenses, restrictions, reservations, covenants and rights-of-way, to modify the boundary lines and to plat or replat portions of the Condominium Property for development of the Condominium Property. The Condominium Association and each Unit Owner and mortgagee of a portion of the Condominium Property agree to execute and deliver any and all agreements, documents, plats and instruments which are necessary or desirable to accomplish the same.

**21.8 Construction; Marketing.** In recognition of the fact that Declarant will have a continuing and substantial interest in the Condominium Property and administration of the Condominium Property, Declarant hereby reserves for itself, its successors, designees and assigns, the right to grant easements over, under and through and use the Common Elements and use all other portions of the Condominium Property owned by Declarant or the Condominium Association in conjunction with and as part of its program of selling, leasing, constructing, marketing, and developing any property owned or controlled by Declarant or its successors, designees or assigns including, but not limited to, the right to carry on construction and to enter and transact business, maintain models and sales, resales and rental offices, place signs, employ sales rental personnel, show Units owned by Declarant, and use portions of the Condominium Property, Units and other improvements owned by Declarant or the Condominium Association for purposes set forth above and for storage of construction materials and for construction and assembling construction components without any cost to Declarant and its successors, nominees and assigns for such rights and privileges.

In addition Declarant, its successors, designees and assigns, shall have the right to construct, maintain and use sales, resales, rental, and construction offices within the Condominium Property. Any models, sales areas, sales, resales or rental center, parking areas, construction office, signs and any other designated areas or other property pertaining to the sale, construction and marketing efforts of Declarant shall not be part of the Common Elements and shall remain the property of Declarant or its nominees, as the case may be.

Declarant shall have the right to construct, maintain and repair structures and landscaping and other improvements to be located on any portion of the Condominium Property owned by Declarant or the Condominium Association as Declarant deems necessary or appropriate for the development of any portion of the Condominium Property. Declarant's use of any portion of the Condominium Property as provided in this Article shall not be a violation of the Documents. Notwithstanding anything to the contrary herein, the right of Declarant to maintain a resale office on any portion of the Condominium Property owned by Declarant or the Condominium Association and to use the Common Elements in connection therewith shall be for a term coterminous with the term of the Declaration and shall not terminate at the expiration of the time described in Article 21.2 above.

**21.9 Scope.** The rights and privileges of Declarant, its successors, designees and assigns, as herein set forth or referred to above are in addition to and in no way limit any other rights or privileges of Declarant, its successors, designees and assigns, under any of the Documents. The provisions above, like other provisions of this Master Deed, grant or reserve rights to and for Declarant that may not be suspended, superseded or modified in any manner unless same is consented to by Declarant, and such rights may be assigned in writing by Declarant in whole or in part as Declarant deems appropriate. As used in this Declaration, the words "its successors or assigns" specifically do not include purchasers of Units unless specifically designated as such in a Supplemental Declaration.

## **ARTICLE 22: GENERAL PROVISIONS**

**22.1 Amendment.** Until the Turnover Date, Declarant may amend this Master Deed in its sole and absolute discretion. After the Turnover Date, Declarant may amend this Master Deed in its sole and absolute discretion at any time and from time to time if such amendment is (i) necessary to bring any provisions hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on a Unit; (iii) required by an institutional lender or a government mortgage agency or purchaser of mortgage loans, to enable the same to make, insure or purchase mortgage loans on a Unit; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on a Unit subject to this Declaration; or (v) correct any stenographic, scrivener's or surveyor's error or any error of a like nature, provided, however, any such amendment shall not adversely affect the title to a Unit unless the Unit Owner thereof shall consent thereto in writing.

After the Turnover Date and so long as it still owns any part of the Condominium Property, Declarant may amend this Master Deed in its sole and absolute discretion for any other purpose, provided the amendment has no materially adverse effect upon the rights of any Owner of a Unit.

After the Turnover Date, (i) any non-Declarant initiated amendment, or (ii) any Declarant initiated amendment which has a materially adverse effect upon the rights of an Owner of a Unit, shall require the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Voting Members representing sixty-seven percent (67%) of the total votes in the Association (other than Declarant), and the consent of Declarant so long as Declarant owns any portion of the Condominium Property. However, the percentage of votes necessary to amend a specific clause shall be not less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**22.2 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.

**22.3 Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Condominium Association unless approved by a vote of seventy-five percent (75%) of the votes eligible to be cast in the Condominium Association. This Section shall not apply, however, to (i) actions brought

by the Condominium Association to enforce the provisions of this Master Deed, (ii) the imposition and collection of Assessments as provided in Article 7 hercof, (iii) proceedings involving challenges to ad valorem taxation, or (iv) counterclaims brought by the Condominium Association in proceedings instituted against it. In the event any claim is made against Declarant by the Condominium Association or any litigation is instituted against Declarant or any of its affiliates by the Condominium Association, then the Condominium Association shall assess all Members (other than the Declarant) for the costs of claim or litigation, including without limitation attorneys' fees incurred, and funds from Assessments shall not be used for any such claim or litigation. In any judicial or administrative proceeding, the prevailing party shall be entitled to receive reasonable attorneys' fees costs.

**22.4 Use of Words "Collier Place" or "Collier Place at Mulberry Park."** No person shall use the words "Collier Place" or "Collier Place at Mulberry Park" or any derivative thereof in any printed or promotional material without the prior written consent of Declarant. However, Owners may use the term "Collier Place" or "Collier Place at Mulberry Park" in printed or promotional materials where such term is used solely to specify that a particular property is located within the Community.

**22.5 Assignment Of Rights.** Declarant shall have the right, in its sole and absolute discretion, to assign all or part of its rights under this Declaration.

**22.6. Notice of Mortgagee Action.** In the event any Unit Owner desires to mortgage his or her Unit, such Unit Owner shall require that the deed of trust or mortgage specifically provide that in the event of foreclosure or the exercise of any remedy set forth in the instrument, the beneficiary or mortgagee shall acquire the Unit subject to this Declaration.

**22.7. No Easement for View.** Each Unit Owner further acknowledges that neither Declarant, nor any Person acting on behalf of Declarant, has made or is authorized to make, any representation or commitment that any view or any other vistas shall be preserved, protected or remain unobstructed, and there are no express or implied easements for view purposes appurtenant to any Unit.

**22.8 Power of Attorney.** Each Unit Owner hereby unconditionally and irrevocably appoints the Condominium Association and the Declarant as its true and lawful attorney-in-fact, coupled with an interest, to execute any and all documents and take any and all actions necessary or desirable to fulfill the purposes and intentions of this Master Deed.

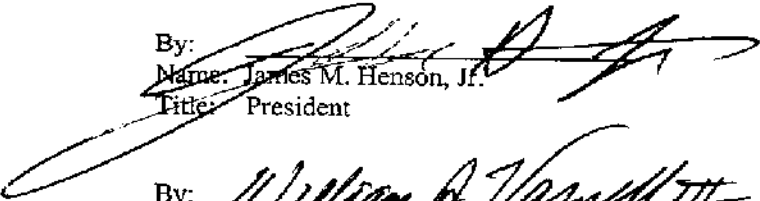
**22.9 Notices.** Notices provided for in the Act, the Master Deed or the Bylaws shall be in writing, and, if to the Board, shall be addressed to the Condominium Association or the Board, c/o Realty Innovations, I.L.C, 633 Chestnut Street, Suite 840, Chattanooga, Tennessee 37450, and if to a Unit Owner, shall be addressed to such Unit Owner at the mailing address of the Unit Owner's Unit or such other address as hereinafter provided. The Condominium Association or the Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices to him/her by giving written notice to the Condominium Association. Notices addressed as above shall be deemed delivered (i) two (2) business days after mailing by United States first class, registered or certified mail, if mailed, or (ii) when delivered in person, if personally delivered.

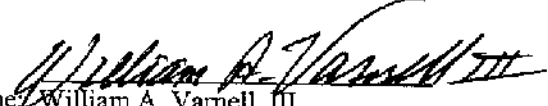
Upon written request to the Board, a lender shall be given a copy of all notices permitted or required by this Master Deed, the Bylaws or the Act to be given to the Unit Owner or Unit Owners whose Unit or Units are subject to such Mortgage.

**22.10 Exhibits.** Exhibits "A" through "E," which are attached hereto, are made a part of this Master Deed as fully as if set forth in their entirety in this Master Deed.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 29<sup>th</sup> day of AUGUST, 2005.

**REALTY INNOVATIONS, LLC, a  
Tennessee limited liability company**

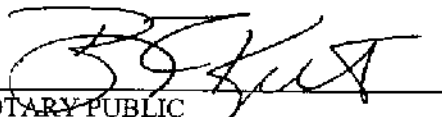
By:   
Name: James M. Henson, Jr.  
Title: President

By:   
Name: William A. Varnell, III  
Title: Member

STATE OF TENNESSEE:  
COUNTY OF HAMILTON:

Before me, a Notary Public of the state and county aforesaid, personally appeared **James M. Henson, Jr.** and **William A. Varnell, III**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to be the **President and a Member**, respectively, of **REALTY INNOVATIONS, LLC**, the within named bargainor, a limited liability company, and that they as such **President and Member**, respectively, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by themselves as **President and Member**, respectively.

WITNESS my hand and seal, at office in Hamilton County, Tennessee this 29<sup>th</sup> day of AUGUST, 2005.

  
NOTARY PUBLIC  
9-6-6  
Commission Expiration





JOINDER

The undersigned hereby joins in this Declaration this 31 day of August, 2005.

COLLIER PLACE CONDOMINIUM  
OWNERS' ASSOCIATION, INC., a  
Tennessee nonprofit corporation

By: [Signature]  
Name: James M. Henson Jr.  
Title: President

STATE OF TENNESSEE  
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county aforesaid, personally appeared James M. Henson Jr., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be **President of Collier Place Condominium Owners' Association, Inc.** the within named bargainer, a corporation, and that he as such President executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

WITNESS my hand and seal, at office in Hamilton County, Tennessee this 31st day of August, 2005.



Sally D. Hunt  
NOTARY PUBLIC  
August 24, 2008  
Commission Expiration

IN WITNESS WHEREOF, **COMMUNITY TRUST & BANKING CO.** hereby joins in this Declaration and has caused these presents to be signed by W. Lloyd Congdon, its Exec. Vice President, and its corporate seal hereto affixed to be effective as of this 31st day of August, 2005.

**COMMUNITY TRUST & BANKING CO.**

By: W. Congdon

Name: W. LLOYD CONGDON

Title: EXEC. VICE PRES.

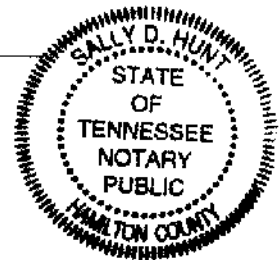
STATE OF TENNESSEE  
COUNTY OF HAMILTON

Before me, Sally D. Hunt, a Notary Public, duly appointed, commissioned and qualified in and for the State of Tennessee, personally appeared W. Lloyd Congdon, with whom I am personally acquainted and who upon oath acknowledged himself/herself to be the Exec. Vice President of **COMMUNITY TRUST & BANKING CO.** the within named bargainer, and that he/she as such Exec. Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the association by himself/herself as such Exec. Vice President

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal at office in said State and County on this 31st day of August, 2005.

Sally D. Hunt  
NOTARY PUBLIC

My Commission Expires: August 24, 2008



IN WITNESS WHEREOF, COHUTTA BANKING COMPANY OF TENNESSEE hereby joins in this Declaration and has caused these presents to be signed by CHRIS A. VARNELL, its VICE PRESIDENT, and its corporate seal hereto affixed to be effective as of this 31st day of AUGUST, 2005.

COHUTTA BANKING COMPANY OF TENNESSEE

By: Chris A. Varnell

Name: CHRIS A. VARNELL

Title: VICE PRESIDENT

STATE OF TENNESSEE  
COUNTY OF HAMILTON

Before me, Sally D. Hunt, a Notary Public, duly appointed, commissioned and qualified in and for the State of Tennessee, personally appeared Chris A. Varnell, with whom I am personally acquainted and who upon oath acknowledged himself/herself to be the Vice President of COHUTTA BANKING COMPANY OF TENNESSEE the within named bargainer, and that he/she as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the association by himself/herself as such Vice President.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal at office in said State and County on this 31st day of August, 2005.

Sally D. Hunt  
NOTARY PUBLIC



My Commission Expires: August 24, 2008

Book and Page: GI 7662 315

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

**LEGAL DESCRIPTION OF THE PROPERTY**

The property which is subject to this Master Deed shall refer to the real property legally described as follows, as the same may be supplemented from time to time by a Supplemental Declaration filed in accordance with the Declaration and Master Deed.

Beginning at a point, said point being in western boundary line of Ooltewah Ringgold Road, said point also being in the northeast corner of property conveyed to E. Carroll Parker by deed recorded in Book 2811, Page 785 in the Register's Office of Hamilton County, Tennessee; thence with and along the northern boundary line of said Parker property North 66 degrees 03 minutes 02 seconds West, a distance of 609.83 feet to a point; thence North 20 degrees 01 minute 29 seconds East, a distance of 84.78 feet to a point; thence North 45 degrees 43 minutes 01 seconds East, a distance 66.63 feet to a point; thence North 75 degrees 24 minutes 42 seconds East, a distance of 48.99 feet to a point; thence North 22 degrees 5 minutes 40 seconds East, a distance of 22.54 feet to a point; thence North 5 degrees 24 minutes 36 seconds East, a distance 332.66 feet to a point; thence North 5 degrees 24 minutes 36 seconds East, a distance of 11.32 feet to a point; thence North 3 degrees 27 minutes 7 seconds East, a distance of 257.19 feet to a point, said point being in the centerline of creek and being in the southern boundary line of Lot One, Final Plat, Lot One of Varnell Property as shown by plat of record in Plat Book 72, Page 141 in the Register's Office of Hamilton County, Tennessee; thence in a southeasterly direction with and along the southern boundary line of said Lot One, Varnell property as shown by plat of record in Plat Book 72, Page 141 in the Register's Office of Hamilton County, Tennessee to a point, said point being in the western boundary line of Ooltewah Ringgold Road; thence in a southerly direction with and along the western boundary line of Ooltewah Ringgold Road to the point of beginning.

**EXHIBIT "B"**

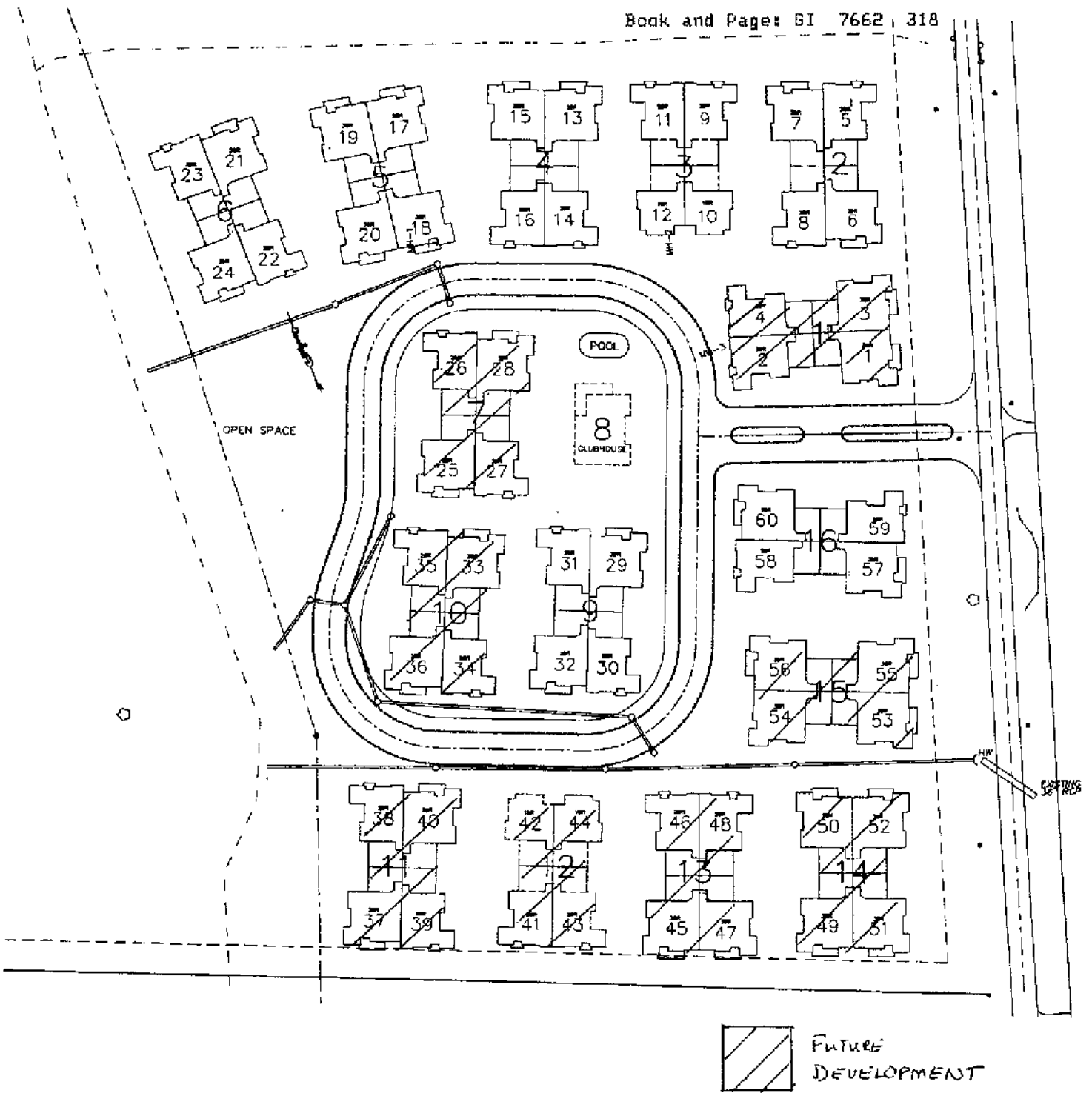
**PLAT OF COLLIER PLACE AT MULBERRY PARK,**

**AND**

**DESCRIPTION OF UNITS, SCHEDULE OF UNIT SQUARE FOOTAGE,**

**AND**

**PERCENTAGE INTEREST IN THE COMMON ELEMENTS**



BLDG #	ADDRESS	Unit #	Unit Type	# Baths	# Beds	Approx. SQ FT	% Interest Common Elements
<b>Building #2</b>	PHASE 2						
	9687 Collier Place	5	Roy	2	2	1675	3.571428571
	9685 Collier Place	6	Rus	2	3	1863	3.571428571
	9683 Collier Place	7	Rus	2	3	1863	3.571428571
	9681 Collier Place	8	Roy	2	2	1675	3.571428571
<b>Building #3</b>	PHASE 3						
	9677 Collier Place	9	Roy	2	2	1675	3.571428571
	9675 Collier Place	10	Ren	2	1	1364	3.571428571
	9673 Collier Place	11	Roy	2	2	1675	3.571428571
	9671 Collier Place	12	Ren	2	1	1364	3.571428571
<b>Building #4</b>	PHASE 4						
	9667 Collier Place	13	Rus	2	3	1863	3.571428571
	9665 Collier Place	14	Roy	2	2	1675	3.571428571
	9663 Collier Place	15	Rus	2	3	1863	3.571428571
	9661 Collier Place	16	Roy	2	2	1675	3.571428571
<b>Building #5</b>	PHASE 5						
	9657 Collier Place	17	Rus	2	3	1863	3.571428571
	9655 Collier Place	18	Rus	2	3	1863	3.571428571
	9653 Collier Place	19	Rus	2	3	1863	3.571428571
	9651 Collier Place	20	Rus	2	3	1863	3.571428571
<b>Building #6</b>	PHASE 6						
	9647 Collier Place	21	Rus	2	3	1863	3.571428571
	9645 Collier Place	22	Roy	2	2	1675	3.571428571
	9643 Collier Place	23	Roy	2	2	1675	3.571428571
	9641 Collier Place	24	Rus	2	3	1863	3.571428571
<b>Building #8</b>	CLUBHOUSE						
	9690 Collier Place						
<b>CLUBHOUSE</b>							
<b>Building #9</b>	PHASE 8						
	9506 Collier Place	29	Rus	2	3	1863	3.571428571
	9512 Collier Place	30	Roy	2	2	1675	3.571428571
	9548 Collier Place	31	Roy	2	2	1675	3.571428571
	9546 Collier Place	32	Rus	2	3	1863	3.571428571
<b>Building #16</b>	PHASE 15						
	9507 Collier Place	57	Rus	2	3	1863	3.571428571
	9505 Collier Place	58	Roy	2	2	1675	3.571428571
	9696 Collier Place	59	Roy	2	2	1675	3.571428571
	9692 Collier Place	60	Rus	2	3	1863	3.571428571



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**EXHIBIT "C"**

**FLOOR PLANS FOR EACH UNIT TYPE**

# Renwick

1,364 +/- square feet

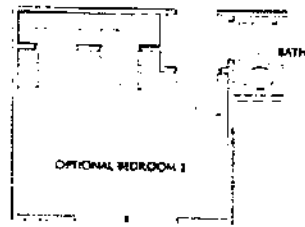
1 Bed / 2 Bath

Sunroom

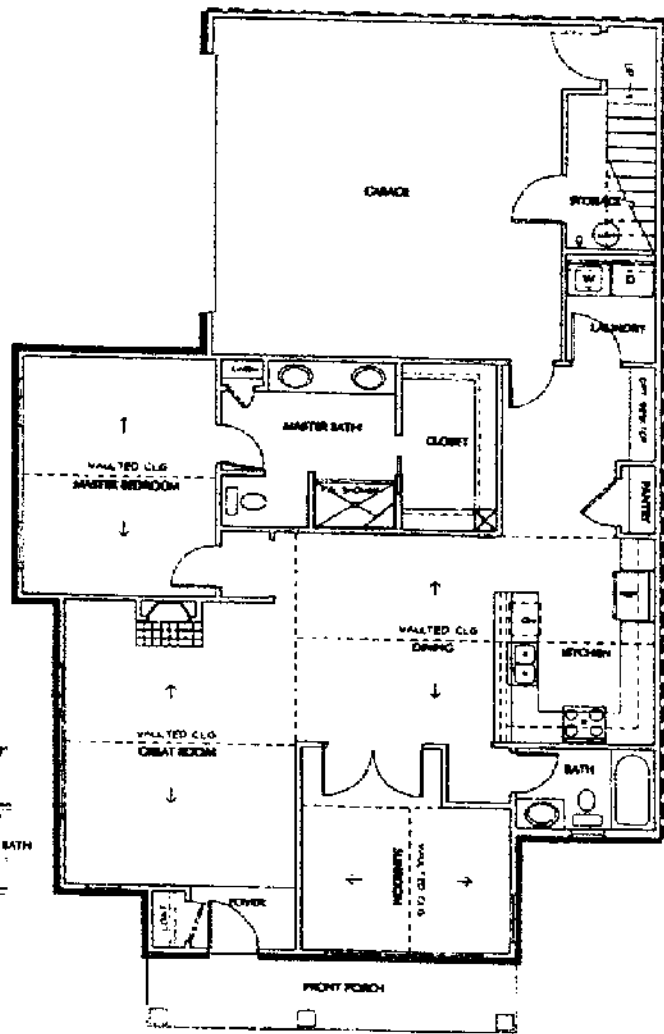
Gas Log Fireplace

Vaulted Ceilings

2 Car Garage



Optional Office / Study



1 Bedroom Plan

# The Roycroft

1,675 +/- square feet

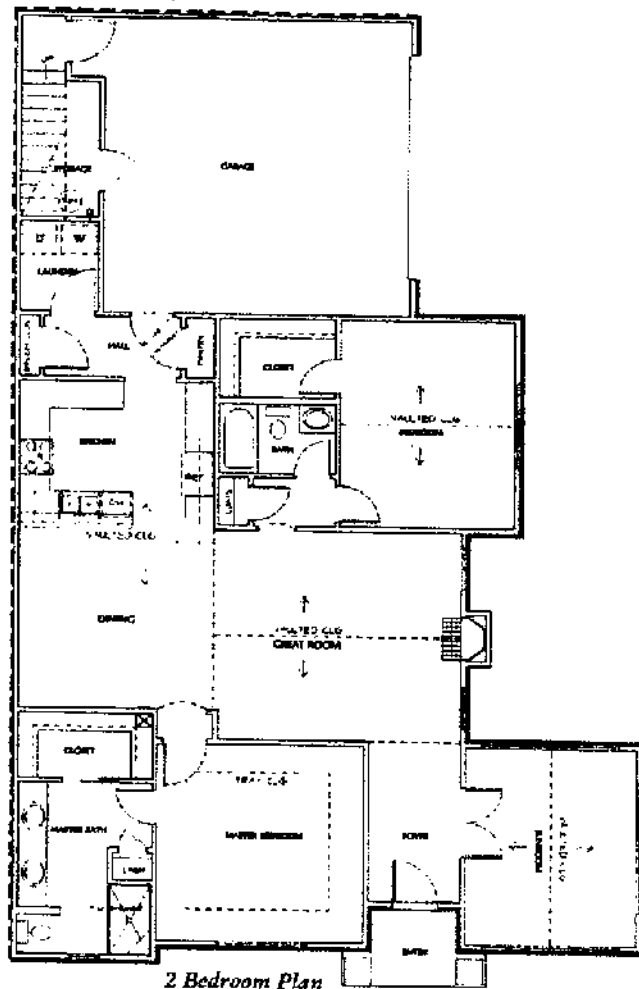
2 Bed / 2 Bath

Sunroom

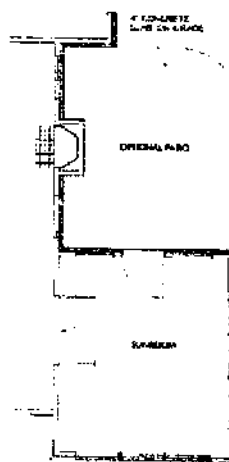
Gas Log Fireplace

Vaulted Ceilings

2 Car Garage



2 Bedroom Plan



Optional Patio

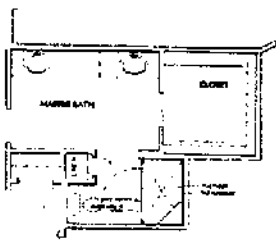


Optional Master Shower

# The Ruskin

1,863 +/- square feet  
3 Bed / 2 Bath  
Vaulted Ceiling

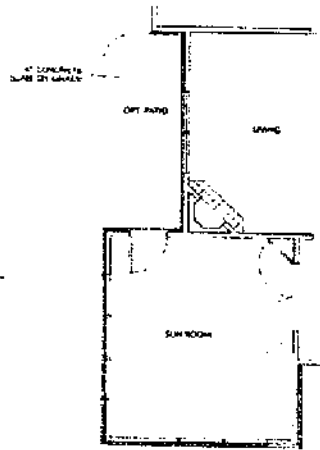
Sunroom  
Gas Log Fireplace  
2 Car Garage



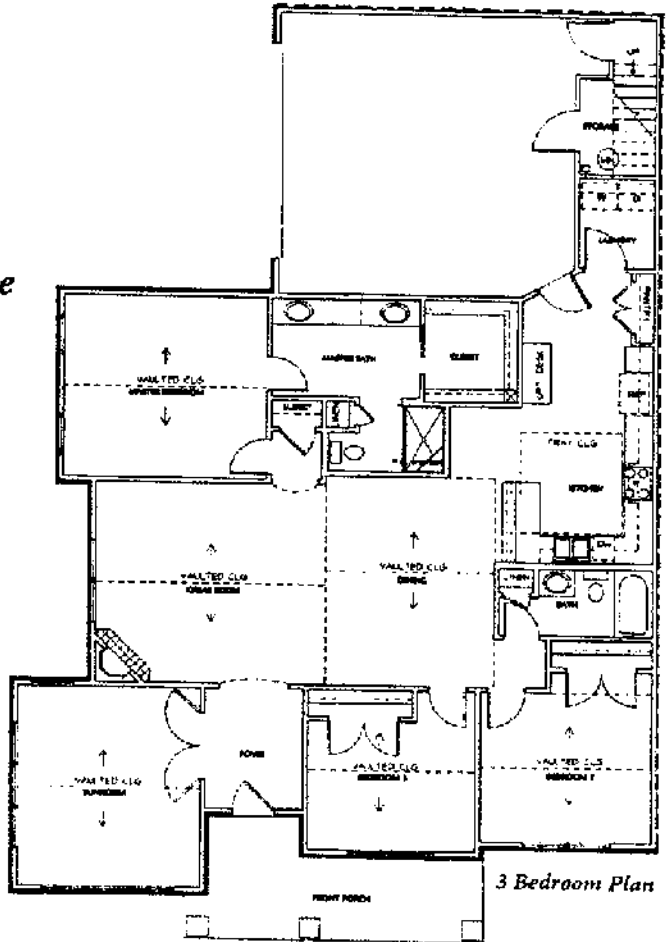
Optional Master Shower



Optional Office / Study



Optional Patio



3 Bedroom Plan

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**EXHIBIT "D"**

**CHARTER**

**OF**

**COLLIER PLACE**

**CONDOMINIUM OWNERS' ASSOCIATION, INC.**

**CHARTER  
OF  
COLLIER PLACE  
CONDOMINIUM OWNERS' ASSOCIATION, INC.**

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**CHARTER  
OF  
COLLIER PLACE CONDOMINIUM OWNERS' ASSOCIATION, INC.**

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

**ARTICLE 1: NAME**

The name of the corporation is Collier Place Condominium Owners' Association, Inc. (the "Condominium Association").

**ARTICLE 2: BENEFIT CORPORATION**

The Condominium Association is a mutual benefit corporation.

**ARTICLE 3: INITIAL REGISTERED OFFICE AND REGISTERED AGENT**

The initial registered office of the Condominium Association shall be at the following street address: 617 Walnut Street, Chattanooga, Hamilton County, Tennessee, 37402. The initial registered agent at such address shall be Brian F. Kopet.

**ARTICLE 4: INCORPORATOR**

The name and address of the Incorporator in the State of Tennessee is: James M. Henson, Jr., 633 Chestnut Street, Suite 840, Chattanooga, Hamilton County, Tennessee 37450

**ARTICLE 5: PRINCIPAL OFFICE**

The street address and zip code of the initial principal office of the Condominium Association is: 4106 Ooltewah-Ringgold Road, Ooltewah, Hamilton County, TN 37363.

**ARTICLE 6: CORPORATION NOT FOR PROFIT**

The Condominium Association is not for profit.

**ARTICLE 7: MEMBERSHIP AND VOTING RIGHTS**

Members shall be all Owners of fee title to Units. Members shall be entitled to one (1) vote for each Unit in which they hold fee title.

**ARTICLE 8: PERIOD OF DURATION**

The Condominium Association shall have perpetual duration.

**ARTICLE 9: PURPOSES AND POWERS**

The Condominium Association is being organized as a nonprofit corporation under the laws of the State of Tennessee, for the purpose of performing certain functions for the common good and general welfare of the residents and property Unit Owners within COLLIER PLACE AT MULBERRY PARK, A HORIZONTAL PROPERTY REGIME as contemplated by the MASTER DEED OF COLLIER PLACE AT MULBERRY PARK, A HORIZONTAL PROPERTY REGIME (the "Master Deed") to be executed by REALTY INNOVATIONS, LLC, a Tennessee limited liability company as "Declarant", and recorded in the public records of Hamilton County, Tennessee. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the Master Deed.

The Condominium Association shall have and may exercise all powers necessary or convenient to effect this purpose as set forth above, including, to the extent and only to the extent necessary to carry out such purpose, the following powers and duties:

- (a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Condominium Association as set forth in the Master Deed, and as the same may be amended from time to time as therein provided, said Master Deed being incorporated herein as if set forth at length;
- (b) Fix, levy, collect and enforce payment of any lawful means, all charges or assessments pursuant to the terms of the Master Deed; to pay all expenses in collection therewith and all office and other expenses incident to the conduct of the business of the Condominium Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Condominium Association (including Common Elements);
- (c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in collection with the affairs of the Condominium Association;
- (d) Borrow money, and with the assent of two-thirds (2/3) of the votes of the Members present and entitled to vote, in person or by proxy, and voting at a duly held meeting, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (e) Dedicate, sell or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided that such dedication or transfer shall have the assent of two-thirds (2/3) of the votes of the Members present and entitled to vote, in person or by proxy, and voting at a duly held meeting;
- (f) Participate in mergers and consolidations with other nonprofit associations organized for the same purposes provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of the votes of the Members present and entitled to vote, in person or by proxy, and voting at a duly held meeting; and
- (g) Have and exercise any and all powers, rights and privileges which an association organized under the laws of the State of Tennessee may now or hereafter have or exercise.

#### **ARTICLE 10: BOARD OF DIRECTORS**

The affairs of the Condominium Association shall be managed by a Board of Directors. The number of directors may be changed by amendment of the Bylaws of the Condominium Association. The initial Board of Directors shall consist of four (4) members, who shall be Thomas O. McPherson, James M. Henson, Jr., William A. Varnell, III and Robert D. Varnell. Each initial member of the Board of Directors shall serve until his successor is appointed or elected in accordance with the Bylaws of the Condominium Association.

#### **ARTICLE 11: REMOVAL OF DIRECTORS AND VACANCIES**

Any director appointed by Declarant may be removed, with or without cause, only by Declarant. Any director elected by the Members at large may be removed, with or without cause, by the vote of the Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be appointed by Declarant or elected by



the Members at large, as the case may be, to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings, as determined by the Board, or who is delinquent in the payment of any Assessment or other charges due the Condominium Association for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and an appropriate successor may be appointed by the remaining directors. In the event of the death, disability, removal, or resignation of a director, the members of the Board may elect a successor to fill the vacancy for the remainder of the term of such director.

#### **ARTICLE 12: OFFICERS**

The initial officers of the Condominium Association shall be as selected by the Board of Directors in accordance with the Bylaws of the Condominium Association.

#### **ARTICLE 13: INDEMNIFICATION OF DIRECTORS AND OFFICERS**

The Condominium Association shall indemnify its directors and officers and may indemnify its employees and agents, to the fullest extent permitted by law, from and against any and all of the expenses or liabilities incurred in defending a civil or criminal proceeding, or other matters, including advancement of expenses prior to the final disposition of such proceedings and amounts paid in settlement of such proceedings, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, article, agreement, vote of Members or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person and an adjudication of liability shall not affect the right to indemnification for those indemnified. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer of the Condominium Association may be entitled.

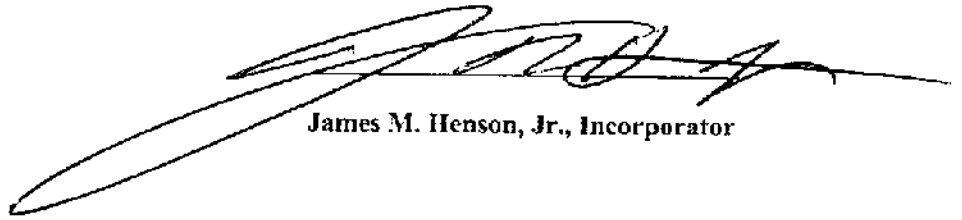
#### **ARTICLE 14: CHARTER AMENDMENT**

Amendment of this Charter shall require the assent of seventy-five percent (75%) of the votes of the entire Membership. Prior to the Turnover Date, any amendment of this Charter shall require the written consent of the Declarant.

#### **ARTICLE 15: DISSOLUTION AND DISPOSITION OF ASSETS UPON DISSOLUTION**

The Condominium Association may be dissolved only if such dissolution is approved by a vote of seventy-five percent (75%) of the votes of the entire Membership. Prior to the Turnover Date, the dissolution of the Condominium Association shall require the written consent of Declarant. Upon dissolution of the Condominium Association, other than incident to a merger or consolidation, the assets of the Condominium Association shall be dedicated and conveyed to one or more appropriate public agencies on the express condition that such assets shall be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Condominium Association. In the event that such dedication is refused acceptance, such assets shall be conveyed to a nonprofit corporation, nonprofit association, nonprofit trust or other nonprofit organization on the express condition that such assets shall be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Condominium Association.

IN WITNESS WHEREOF, the undersigned executes this Charter.



James M. Henson, Jr., Incorporator

**CONSENT TO APPOINTMENT AS REGISTERED AGENT**

**FOR**

**MULBERRY PARK COMMUNITY**

**CONDOMINIUM ASSOCIATION, INC.**

The undersigned, **Brian F. Kopet**, hereby consents to his appointment as a registered agent for the above named association for the purpose of complying with the provisions of the laws of the State of Tennessee regarding the appointment of a registered agent. The undersigned hereby further acknowledges that the address supplied above is the correct address for the registered office of the Collier Place Condominium Owners' Association, Inc.

This consent is made this 29<sup>th</sup> day of AUGUST, 2005.



Brian F. Kopet, as Registered Agent

Book and Page: GI 7662 330

**EXHIBIT "E"**

**BYLAWS**

**OF**

**COLLIER PLACE**

**CONDOMINIUM OWNERS' ASSOCIATION, INC.**

**BYLAWS**  
**OF**  
**COLLIER PLACE**  
**CONDOMINIUM OWNERS' ASSOCIATION, INC.**

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**OF**  
**COLLIER PLACE**  
**CONDOMINIUM OWNERS' ASSOCIATION, INC.**

**ARTICLE 1: IDENTITY**

**1.1 Name.** The name of the corporation is Collier Place Condominium Owners' Association, Inc. (the "Condominium Association").

**1.2 Registered Office.** The initial registered office of the Condominium Association shall be at the following street address: 617 Walnut Street, Chattanooga, Hamilton County, Tennessee 37402. The initial registered agent at such address shall be Brian F. Kopet.

**1.3 Adoption.** These Bylaws have been adopted by the Board of Directors as the Bylaws of the Association.

**1.4 Definitions.** Terms used in these Bylaws which are defined in the MASTER DEED OF COLLIER PLACE AT MULBERRY PARK, A HORIZONTAL PROPERTY REGIME (the "Master Deed") shall have the same meaning in these Bylaws as in the Master Deed.

**ARTICLE 2: POWERS AND DUTIES OF THE CONDOMINIUM ASSOCIATION AND THE EXERCISE THEREOF**

The Condominium Association shall have all powers granted to it by Tennessee law, the Master Deed, the Charter, and these Bylaws. All granted powers shall be exercised by the Board of Directors unless the exercise thereof is otherwise restricted in the Master Deed, the Charter, these Bylaws, the Tennessee Nonprofit Corporation Act (the "Act") or by applicable law.

**ARTICLE 3: MEMBERSHIP**

**3.1. Voting Membership.** Voting members shall be all Owners of fee title to Units. Members shall be entitled to one (1) vote for each Unit in which they hold fee title.

Voting rights may be exercised by a Member or the Member's spouse. In any situation where more than one Person holds an interest in a Unit, the vote for the respective Unit shall be exercised by any such Person, provided, however, the Persons holding the interest in the Unit shall notify the Secretary of the Condominium Association, in writing, prior to or during any meeting of the manner in which the vote for the Unit is to be exercised and, in the absence of such notice, the Unit's vote shall be suspended if more than one Person seeks to exercise it. The voting rights of a Member that is a company or other form of entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary.

**3.2 Turnover Date.** The Turnover Date shall occur within sixty (60) days after the occurrence of the earlier of the following conditions:

- (a) The sale to Persons other than Declarant of all of the Lots and Units intended to be developed within Mulberry Park; or
- (b) Such earlier date as determined by the Declarant, in its sole and absolute discretion.

#### **ARTICLE 4: MEMBERS' MEETINGS**

**4.1 Date and Place of Meetings.** Meetings of the Members shall be held on the date and at such place in Hamilton County, Tennessee or such other place as may be designated by the Board of Directors from time to time.

**4.2 Annual Meetings.** Each year after the Turnover Date, an annual meeting shall be held for the purpose of receiving reports of officers, committees, and others, to elect members of the Board of Directors and to conduct such other business as may be properly brought before the meeting.

**4.3 Special Meetings.** The President of the Condominium Association or the Board of Directors may call special meetings of the Members. In addition, it shall be the duty of the President to call a special meeting of the Condominium Association if so directed by resolution or a majority or a quorum of the Board of Directors or, if after the Turnover Date, upon a petition signed by ten percent (10%) of the total votes of the Members of the Condominium Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**4.4 Notice of Meetings.** Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally, by mail or any other manner permitted by applicable law, to each Member, not more than two (2) months, nor less than ten (10) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Condominium Association.

Waiver of notice of a meeting of the Condominium Association shall be deemed the equivalent of proper notice. Any Member may, in a signed writing, waive notice of any meeting of the Condominium Association, either before or after such meeting. Attendance at a meeting by a Member, either in person or by proxy, shall be deemed a waiver by such Member of notice of the time, date, place, and purpose thereof, unless such Member or his or her proxy, as the case may be, specifically objects to lack of proper notice at the time the meeting is called to order.

**4.5 Quorum.** Except as otherwise provided in these Bylaws or in the Master Deed, the presence in person or by proxy of ten percent (10%) of the votes eligible to be cast by Members shall constitute a quorum at any meeting of the Condominium Association.

**4.6 Adjournment of Meetings.** If any meeting of the Condominium Association cannot be held because a quorum is not present, a majority of the Members entitled to vote who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed in Article 4, Section 4, hereof.

**4.7 Vote Required.** When a quorum is present at any meeting, a majority of the votes present, whether in person or by proxy, shall decide any question brought before the meeting, unless the Master Deed, the Charter, these Bylaws or any applicable law provides otherwise.

**4.8 Proxies.** Members may vote by proxy. Proxies must be in writing, dated, signed and filed with the Secretary at the time of or before the appointed time of a meeting of the Unit Owners. Every proxy shall



be revocable and shall automatically cease upon conveyance by the Unit Owner of his/her/their Unit, upon receipt by the Secretary of notice of the death or judicially declared incompetence of a Unit Owner, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy. The Board of Directors may from time to time, establish such other or additional requirements for proxies as it shall determine.

**4.9 Conduct of Meetings.** The President shall preside over all meetings of the Condominium Association. The Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted and all transactions and proceedings occurring at the meeting.

**4.10 Action Without a Meeting or by Written Ballot.** Any action required to be taken at a meeting of the Members or any action which may be taken at a meeting of the Members may be taken without a meeting by written consent or by written ballot in accordance with the Act.

## **ARTICLE 5: BOARD OF DIRECTORS**

**5.1 Number of Directors.** The governance and administration of the affairs of the Condominium Association shall be vested in a Board of Directors. The number of directors of the Condominium Association shall not be less than one (1) nor more than nine (9). The initial Board shall consist of the person or persons named in the Charter.

**5.2 Election or Appointment of Directors.** Prior to the Turnover Date, Declarant shall appoint all of the members of the Board of Directors. Subsequent to the Turnover Date, each Member shall be entitled to cast one (1) vote for each director to be elected. Immediately prior to the Turnover Date, Declarant shall call a special meeting of the Members at which the following shall occur: (a) the existing directors shall resign; and (b) the Members shall set the number of directors at nine (9) as described in Article 5, Section 3, hereof. On and after the Turnover Date, Declarant shall be considered a Member entitled to one (1) vote for each Unit owned by Declarant. Declarant may, in its sole and absolute discretion, permit the Members to elect directors earlier than the conditions set forth above.

**5.3 Designation of Term.** Immediately prior to the Turnover Date, the Members shall elect nine (9) directors. Of the nine (9) directors elected the Declarant shall designate, three (3) of the directors to serve on the Board of Directors commencing on the Turnover Date for a term of three (3) years, three (3) directors to serve on the Board of Directors commencing on the Turnover Date for a term of two (2) years, and two (2) directors to serve on the Board of Directors commencing on the Turnover Date for a term of one (1) year. Directors shall be elected by a plurality of the votes cast, such that those candidates receiving the largest number of votes shall be elected. In the case of a tie vote, the winner shall be determined by a run-off election between those candidates which are tied. Cumulative voting is not permitted.

**5.4 Qualifications for Election.** All directors shall be Members.

**5.5 Nomination of Directors.** Immediately prior to any election by the Members, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and at least three (3) Members of the Condominium Association. The Nominating Committee shall be appointed by the Board of Directors not less than ninety (90) days prior to each annual meeting of the Members. The members of the Nominating Committee serve for a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it, in its sole discretion determines appropriate, but in no event less than the number of positions to be filled. At least sixty (60) days prior to the annual meeting, the Nominating Committee shall recommend the names of

Members selected by a majority vote of the Nominating Committee to be submitted to the Members for election to the Board of Directors.

Ten percent (10%) or more of the total votes eligible to be cast by Members who are not members of the Nominating Committee may also nominate candidates for election to the Board of Directors by petition signed by them and filed with the Secretary at least thirty (30) days prior to the annual meeting. The names of any nominees, after having been certified by the Secretary or any other officer that they are qualified for election and have been nominated in accordance with the provisions of these Bylaws, shall be included in any proxy mailing to the Members. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Nominations may also be made from the floor at the annual meeting of Members.

**5.6 Removal of Directors and Vacancies.** Any director appointed by Declarant may be removed, with or without cause, only by Declarant. Any director elected by the Members at large may be removed, with or without cause, by the vote of the Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be appointed by Declarant or elected by the Members at large, as the case may be, to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings, as determined by the Board, or who is delinquent in the payment of any Assessment or other charges due the Condominium Association for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and an appropriate successor may be appointed by the remaining directors. In the event of the death, disability, removal, or resignation of a director, the members of the Board may elect a successor to fill the vacancy for the remainder of the term of such director.

**5.7 Compensation.** No director shall receive a salary or any other compensation whatsoever from the Condominium Association for acting as such, but shall be entitled to be reimbursed for expenses reasonably incurred on behalf of the Condominium Association.

**5.8 Fiduciary Duty.** The directors shall act in good faith in a manner they reasonably believe to be in the best interests of the development of Collier Place at Mulberry Park and the goals of the Condominium Association.

**5.9 Powers and Duties.** The Board of Directors shall be responsible for the affairs of the Condominium Association and shall have all of the powers and duties necessary for the administration of the Condominium Association's affairs, and as provided by law, may do all acts other than those acts which may be done and exercised exclusively by the Members. In addition to the duties imposed by these Bylaws or by any resolution of the Condominium Association that may hereafter be adopted, the Board shall have the power to and be responsible for the following, by way of explanation and not limitation:

- (a) Preparation and adoption of an annual budget in which there shall be established the contribution of each Unit Owner to the Common Expenses;
- (b) Making assessments to defray the Common Expenses and other assessments authorized by the Master Deed, establishing the means and methods of collecting such assessments, and establishing the period of payment for assessments;
- (c) Providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Condominium Association as determined by the Board, including the Common Elements, maintenance or provision of services which are generally provided by a municipality, such as maintenance of grassed or landscaped areas along dedicated

rights-of-way, maintenance of street lights and community signage, garbage pick-up and maintenance of roadways within the Neighborhood;

- (d) Designating, hiring, and discussing the personnel necessary for the operation of the Condominium Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties, and setting the compensation of directors;
- (e) Collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Condominium Association;
- (f) Making and amending use restrictions, rules and regulations, and design guidelines;
- (g) Opening of bank accounts on behalf of the Condominium Association and designating the signatories required;
- (h) Enforcing by legal means the provisions of the Master Deed, any Neighborhood Declaration, these Bylaws, and the use restrictions, rules and regulations, and design guidelines adopted pursuant to any of the foregoing, and bringing any proceedings which may be instituted on behalf of or against the Unit Owners, their respective invitees or licensees concerning the Condominium Association;
- (i) Obtaining and carrying insurance against casualties and liabilities, as provided in the Master Deed, and paying the premium cost thereof;
- (j) Providing services to all areas for which the Condominium Association is obligated to provide services;
- (k) Paying the cost of all services, if any, rendered to the Condominium Association or its Members which are not directly chargeable to Unit Owners of particular Units;
- (l) Keeping books with detailed accounts of the receipts and expenditures affecting the Condominium Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred;
- (m) Depositing Condominium Association funds into interest bearing accounts; and
- (n) Contracting with any Person for the performance of various duties and functions.

The Board shall have the power to enter into common management agreements and other agreements with the Mulberry Park Community Association, other Neighborhood Associations, Declarant and such other persons as it determines appropriate from time to time. Any and all functions of the Condominium Association shall be fully transferable by the Board, in whole or in part, to any other entity. To the extent permitted by law, the Board shall have the power to delegate its functions to designees of the Board, such as, without limitation, a management agent, committees established by the Board, and employees and independent contractors of the Condominium Association.

## **ARTICLE 6: MEETINGS OF THE BOARD OF DIRECTORS**

**6.1 Organizational Meeting.** The organizational meeting of the first elected Board of Directors shall be held within ten (10) days after the annual meeting of the Members at which the Directors were elected at such time and place as shall be fixed by the Board of Directors.

**6.2 Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but commencing with the Turnover Date. At least four (4) regular meetings shall be held during each fiscal year with at least one (1) meeting per quarter, provided, however, that the annual meeting shall constitute a regular meeting.

Notice of the time and place of any meeting, other than an annual meeting, shall be communicated to the directors not less than ten (10) days prior to the meeting.

**6.3 Special Meetings.** Special meetings of the Board of Directors or any committee designated thereby shall be held when called by written notice signed by the President or by a majority of the directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by personal delivery, first class mail or telephone at least five (5) days prior to the date of the meeting, unless the special business is of a nature which, in the President's discretion, requires more immediate action, and then a minimum of twenty-four (24) hours' notice shall be deemed sufficient.

**6.4 Waiver of Notice.** Any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as when taken at a meeting duly held after regular call and notice if (a) a quorum is present and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**6.5 Quorum of Board of Directors and Required Vote.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors except as otherwise provided in the Master Deed, the Charter or these Bylaws. If any meeting of the Board of Directors cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**6.6 Conduct of Meetings.** The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

**6.7 Open Meetings.** All meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested by a director and granted by the President. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Members, when such action is necessary in the reasonable judgment of the President.

**6.8 Executive Session.** The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Condominium Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

**6.9 Telephone Meetings.** Any regular or special meeting of the Board of Directors may be held by telephone conference, at which each participating director can hear and be heard by all other participating directors.

**6.10 Action Without a Meeting.** Any action required to be taken at a meeting of the Board of Directors or any action which may be taken at a meeting of the Board of Directors or of a committee of directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors or all of the members of the committee of directors, as the case may be in accordance with the Act.

## ARTICLE 7: OFFICERS

**7.1 Officers.** The officers of the Condominium Association shall be a President, Vice President, Secretary, and Treasurer to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one (1) or more Assistant Secretaries and one (1) or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary may not be held by the same person.

**7.2 Appointment, Term of Office, and Vacancies.** The officers of the Condominium Association shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors during a fiscal year. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the un-expired portion of the term.

**7.3 Removal.** Any officer may be removed by a majority vote of the Board of Directors in the sole discretion of the Board and the removal of a director who is also an officer shall automatically act as a removal from such director's position as an officer.

**7.4 Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified in the notice and unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective.

## ARTICLE 8: DUTIES OF OFFICERS

The officers of the Condominium Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as are from time to time specifically conferred or imposed by the Board of Directors.

**8.1 President.** The President shall be the chief executive officer of the Condominium Association and shall:

- (a) Act as presiding officer at all meetings of the Members and the Board of Directors;
- (b) Call special meetings of the Members and the Board of Directors;
- (c) Sign, with the Secretary or Treasurer if the Board of Directors so requires, all checks, contracts, promissory notes, leases, subleases and other instruments on behalf of the Condominium Association, except those which the Board of Directors specifies may be signed by other persons;
- (d) Perform all acts and duties usually required of a chief executive to ensure that all orders and resolutions of the Board of Directors are carried out; and
- (e) Act as an ex-officio member of all committees and render an annual report at the annual meeting of Members.

**8.2 Vice President.** The Vice President, in the absence or disability of the President, shall exercise the powers and perform the duties of the President. The Vice President also shall assist the President generally, and exercise other powers and perform other duties as shall be prescribed by the directors.

**8.3 Secretary.** The Secretary shall have the following duties and responsibilities:

- (a) Attend all regular and special meetings of the Members and the Board of Directors and keep all records and minutes of proceedings thereof or cause the same to be done;

- (b) Have custody of the corporate seal, if any, and affix the same when necessary or required;
- (c) Attend to all correspondence on behalf of the Board of Directors, prepare and serve notice of meetings and keep membership books; and
- (d) Have custody of the minute book of the meetings of the Board of Directors and the meetings of the Members and act as agent for the transfer of the corporate books.

**8.4 Treasurer.** The Treasurer shall:

- (a) Receive monies as shall be paid into his hands for the account of the Condominium Association and disburse funds as may be ordered by the Board of Directors, taking proper vouchers for disbursements and be custodian of all contracts, leases and other important documents of the Condominium Association which he shall keep safely deposited;
- (b) Supervise the keeping of accounts of all financial transactions of the Condominium Association in books belonging to the Condominium Association and deliver the books to his successor;
- (c) Prepare and distribute to all of the members of the Board of Directors prior to each annual meeting and whenever else required a summary of the financial transactions and condition of the Condominium Association from the preceding year;
- (d) Make a full and accurate report on matters and business pertaining to his office to the Members at the annual meeting and make all reports required by law; and
- (e) Act as the chairman of the Finance Committee.

The Treasurer may have the assistance of an accountant or auditor, who shall be employed by the Condominium Association. In the event the Condominium Association enters into a management agreement, it shall be proper to delegate any or all of the Treasurer's functions to the management agent as is deemed appropriate by the Board of Directors.

**ARTICLE 9: COMMITTEES**

**9.1 Standing Committees.** Each year after the Turnover Date, the Board of Directors, by resolution adopted by a majority of the directors in office, may designate and appoint members of each of the following committees, each of which shall consist of two (2) or more directors.

- (a) **Grounds Committee.** The Grounds Committee shall advise the Board of Directors on matters concerning maintenance of Common Areas. No live trees shall be moved from Common Elements nor shall any alteration or improvement be made to Common Elements except with the approval of the Board of Directors and in accordance with the Master Deed.
- (b) **Finance Committee.** The Finance Committee shall in general supervise, direct and control all matters pertaining to Condominium Association finances including, but not limited to, the placing of insurance, the filing of tax returns, the payment of taxes, the preparation of the annual operating budget for approval by the Board of Directors, preparation of current reports for the Board of Directors and the Condominium Association's financial condition and the issuance to Members of a condensed quarterly operating statement. The Finance Committee shall have the power, with the approval of the Board of Directors, to direct the Condominium Association, to employ at the expense of the Condominium Association, such clerical aid and assistance as may be necessary to handle the accounts.

(c) **Newsletter Committee.** The Newsletter Committee shall supervise and control the preparation of a newsletter for distribution to all Members.

(d) **Legal and Bylaws Committee.** The Legal and Bylaws Committee shall be charged with the publication and interpretation of the rules and regulations, these Bylaws, and the Master Deed and, in general, with all matters of a legal nature pertaining to the Condominium Association.

**9.2 Ad Hoc Committees.** From time to time, the Board of Directors may appoint such ad hoc committees by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present, with such powers and composition as the Board of Directors shall determine.

**9.3 Powers of Committees.** The several committees shall act only as committees and the individual members thereof shall have no power or authority to act on behalf of the Board or the Condominium Association.

## **ARTICLE 10: DISCIPLINE**

**10.1 Enforcement.** The Board of Directors shall have the power to impose reasonable fines which shall constitute an automatic and continuing lien upon a Unit of the violating Unit Owner, to suspend a Unit Owner's right to use certain Common Elements, and to preclude contractors, subcontractors, agents and other invitees of a Unit Owner or occupant from the Community for violation of any duty imposed under the Master Deed or these Bylaws, provided, however, that nothing herein shall authorize the Condominium Association or the Board of Directors to limit a Unit Owner's or occupant's ingress and egress to or from a Unit. In the event that any occupant of a Unit violates the Master Deed or these Bylaws, and a fine is imposed, the fine shall first be assessed against the occupant residing therein, provided, however, that if the fine is not paid by the occupant within the time period set by the Board of Directors, the Unit Owner shall pay the fine upon notice from the Condominium Association. The failure of the Board of Directors to enforce any provision of the Master Deed or Bylaws shall not be deemed a waiver of the right of the Board of Directors to do so thereafter.

**10.2 Notice.** Prior to imposition of any sanction hereunder for any reason other than nonpayment of assessments or other charges, the Board of Directors or its delegate shall serve the accused with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, (c) a period of not less than ten (10) days within which the alleged violator may present a written request to the Board of Directors for a hearing, and (d) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge has been requested within ten (10) days of the notice.

**10.3 Hearing.** If a hearing is requested within the allotted ten (10) day period, the hearing shall be held in executive session of the Board of Directors at the next regularly scheduled meeting or at a Special Meeting affording the accused a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the accused appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any. The Board of Directors may, but shall not be obligated, to suspend any proposed sanction if the violation is cured within the ten (10) day period. Any suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions by any Person.

**10.4 Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Condominium Association may elect to enforce any provisions of the Master Deed or these Bylaws by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking

rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Unit Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.

## **ARTICLE 11: FISCAL MANAGEMENT**

**11.1 Fiscal Year.** The fiscal year of the Condominium Association shall commence upon the first (1st) day of January and conclude on the thirty-first (31st) day of December.

**11.2 Depositories.** The funds of the Condominium Association shall be deposited in such accounts as may be selected by the Board of Directors, including checking and savings accounts in one (1) or more banks and/or savings and loan Condominium Associations, Certificates of Deposit, U.S. Treasury Bills and money market accounts with an investment firm or firms, all in accordance with resolutions approved by the Board of Directors. The funds shall be used only for lawful purposes of the Condominium Association.

**11.3 Expenses.** The receipts and expenditures of the Condominium Association may be credited and charged to accounts as the Board of Directors may determine, in accordance with good accounting practices as set forth in Article 11, Section 7, below.

**11.4 Reserve Accounts.** The Condominium Association shall establish and maintain an adequate reserve account for the periodic maintenance, repair and replacement of Common Elements.

**11.5 Budget.** The Board of Directors shall adopt a budget for each fiscal year that shall include the estimated funds required to defray the expenses of the Condominium Association for the fiscal year and to provide and maintain funds for the accounts established by the Board of Directors (including a capital replacement reserve), in accordance with good accounting practices as set forth in Article 11, Section 7, below.

### **11.6 Fidelity Bonds.**

If determined by the Board, and if such bonds are reasonably available, the Condominium Association shall purchase blanket fidelity bonds for all directors, officers and employees of the Condominium Association and for any management agent who controls or disburses funds of the Condominium Association and any contractor handling or responsible for Condominium Association funds. The following provisions shall govern the Condominium Association's purchase of the bonds:

- (a) Each fidelity bond purchased by the Condominium Association shall name the Condominium Association as an obligee of the bond;
- (b) The premiums for bonds shall be paid by the Condominium Association;
- (c) The fidelity bonds shall be in the amount determined from time-to-time by the Board of Directors;
- (d) Each bond shall include a provision requiring ten (10) days' written notice to the Condominium Association before the bond can be canceled or substantially modified for any reason.

**11.7 Accounts and Reports.** The following standards of performance will be followed unless the Board by resolution specifically determines otherwise:

- (a) Accrual accounting (exclusive of depreciation and amortization), as defined by generally accepted accounting principles, shall be employed;
- (b) Accounting and controls should conform to generally accepted accounting principles;



- (c) Cash accounts of the Condominium Association shall not be commingled with any other accounts;
- (d) No remuneration shall be accepted by any officer, director or employee of the Condominium Association from vendors, independent contractors, or others providing goods or services to the Condominium Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Condominium Association;
- (e) Any financial or other interest which any officer, director or employee of the Condominium Association may have in any firm providing goods or services to the Condominium Association shall be disclosed promptly to the Board of Directors; and
- (f) An annual report consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. If determined by the Board of Directors, the annual report referred to above shall be prepared on an audited basis by a Certified Public Accountant selected by the Board of Directors. If unaudited financial statements are used, the unaudited financial statements will be certified by an officer of the Condominium Association,

**11.8 Agreements, Contracts, Deeds, Leases, Checks, etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Condominium Association shall be executed by the President and Secretary or by such other members of the Board or officers of the Condominium Association as may be designated by resolution of the Board of Directors.

**11.9 Books and Records.** The Master Deed, Charter, Bylaws, membership register, books of account and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any mortgagee, Unit Owner, Member, director, and officer or such person's agent, at any reasonable time and for any proper purpose, at the office of the Condominium Association. Such records shall include a record of receipts and expenditures and accounts for each Unit Owner, which accounts shall designate the names and addresses of the Unit Owners, the due dates and amount of each Assessment, the amounts paid upon the account and the balance due. Accounts of Unit Owners shall only be available for inspection by the Board, the officers and the Unit Owner or such Unit Owner's mortgagee. Books and records of the Condominium Association may be kept at the Condominium Association office at the Property, or off-site at the office designated by Declarant.

The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the week when an inspection may be made; and (3) payment of the cost of reproducing copies of documents requested.

Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Condominium Association and the physical properties owned or controlled by the Condominium Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Condominium Association.

**11.10 Insurance.** The Condominium Association shall procure, maintain and keep in full force and effect insurance as may be required by the Master Deed to protect the interests of the Condominium Association and the Unit Owners.

## ARTICLE 12: MISCELLANEOUS

**12.1 Parliamentary Rules.** Robert's Rules of Order (then current edition) shall govern the conduct of Condominium Association proceedings when not in conflict with applicable law, the Charter, the Master Deed, or these Bylaws.

**12.2 Construction.** If there are conflicts between the provisions of Tennessee law, the Charter, the Master Deed and/or these Bylaws, the provisions of Tennessee law, the Master Deed, the Charter, and these Bylaws (in that order) shall prevail.

**12.3 Validity.** If any Bylaw or rule or regulation is adjudicated to be invalid, such fact shall not affect the validity of any other Bylaw or rule or regulation.

**12.4 Notices.** Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first-class, postage prepaid: (a) if to a Unit Owner or Member, at the address which the Unit Owner or Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of the Unit Owner or Member; or (b) if to the Condominium Association or the Board of Directors, then at the principal office of the Condominium Association or at such other address as shall be designated by the Condominium Association or the Board of Directors in writing and given to the Unit Owners or Members in accordance with this Section.

**12.5 Amendments.** Until the Turnover Date, Declarant may amend these Bylaws in its sole and absolute discretion. After the Turnover Date, Declarant may amend these Bylaws at any time and from time to time, in its sole and absolute discretion, if such amendment is: (a) necessary to bring any provisions hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on a Unit; (c) required by an institutional lender or a government mortgage agency or purchaser of mortgage loans to enable the same to make, insure or purchase mortgage loans on a Unit; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on a Unit subject to the Master Deed; or (e) necessary to correct any stenographic, scrivener's or surveyor's error or any error of a like nature, provided, however, any such amendment shall not adversely affect the title to a Unit, unless the Unit Owner thereof shall consent thereto in writing.

After the Turnover Date and so long as it still owns any part of the Condominium Property as described in the Master Deed, Declarant may amend these Bylaws in its sole and absolute discretion for any other purpose, provided, however, that such amendment shall not materially and adversely affect the rights of any Unit Owner of a Unit, without the approval of such Unit Owner.

After the Turnover Date, (a) any non-Declarant initiated amendment, or (b) any Declarant initiated amendment which has a materially adverse effect upon the rights of a Unit Owner, shall require the affirmative vote (in person or by proxy) or the written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total votes in the Condominium Association (other than Declarant), and the consent of Declarant, so long as Declarant owns any portion of the Property or the Additional Property. However, the percentage of votes necessary to amend a specific clause shall be not less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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

Any amendment made prior to or after the Turnover Date shall conform to the Master Deed.

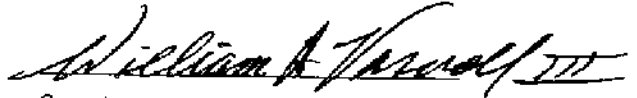
**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am duly elected and acting Secretary of Collier Place Condominium Owners' Association, Inc., a Tennessee nonprofit corporation;

That the foregoing Bylaws constitute the original Bylaws of said Condominium Association, as duly adopted at a meeting of the Board of Directors thereof held on the 31<sup>st</sup> day of August, 2005.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the corporate seal this 31<sup>st</sup> day of August, 2005.

  
Secretary