

RTES#96130

New Owner
A.L. James Const. & Develop.
P.O. Box 21886
Chatt., TN 37424

Send tax bills to:
MASTER DEED same
FOR

Tax ID
170D-B-008.08

THE GARDENS AT HERITAGE GREEN CONDOMINIUMS

THIS MASTER DEED is made as of the 17th day of November, 2004, by A. L. James

Construction and Development, LLC a Tennessee limited liability company (hereinafter referred to as "Developer").

Instrument: 2004111900098
Book and Page: GI 7344 922
Deed Recording Fee \$300.00
Data Processing Fee \$2.00
Total Fees \$302.00

WITNESSETH
User: EGORDON
Date: 11-19-2004
Time: 09:37:01 A
Contact: Pam Hurst, Register
Hamilton County Tennessee

WHEREAS, Developer is the owner of that certain parcel of land more particularly described in Exhibit "A" attached hereto and made a part hereof, upon which Developer has constructed and is in the process of constructing certain buildings, structures, improvements and other permanent fixtures (together with all rights and privileges belonging or in anywise appertaining thereto hereinafter collectively "the Property"), which Developer desires to submit to a horizontal property regime pursuant to the Tennessee Horizontal Property Act, Tennessee Code Annotated 66-27-101, et seq., as now or hereafter amended (hereinafter the "Act"); and

WHEREAS, Developer intends to sell to various purchasers the fee title to individual Units (as hereinafter defined) together with an undivided percentage ownership interest in the Common Elements (as hereinafter defined) subject to the covenants, conditions, restrictions, limitations and easements herein set forth; and

WHEREAS, Developer desires to establish for its own benefit and for the mutual benefit of all future owners, occupants or Mortgagees of the Property, including additional Parcels, or any part thereof, certain rights, easements and privileges in, over and upon the Property and certain mutually beneficial restrictions, obligations and liens with respect to the proper use, conduct, and maintenance thereof, hereinafter set forth, all of which rights, easements, privileges, restrictions, obligations and liens are declared to be in furtherance of a plan to promote and preserve the cooperative aspects of ownership of and residence on the Property and are established for the purpose off facilitating the proper administration of the Property and enhancing and perfecting the value, desirability and attractiveness of the Property,

NOW, THEREFORE, Developer does hereby publish and declare that all of the Property is herewith submitted to a horizontal property regime pursuant to the Act, and from this date, the 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, By-laws, Plat (as hereinafter defined) and other exhibits attached hereto and made a part hereof, all of which are declared and agreed to be covenants both running with and encumbering the Property, binding upon and benefiting Developer, its successors and assigns and any present or future Owner (as hereinafter defined) of all or any interest in the Property and their respective grantees, successors, heirs, executors, administrators and other personal representatives, devisees and assigns. Developer does hereby further declare as follows:

File
Realty

CC# 100880

SM

ARTICLE I

NAME Book and Page: G1 7344 923

The Property shall be named and may be commonly referred to as The Gardens at Heritage Green Condominiums.

ARTICLE II

Definitions

Section 1. "Association" shall mean and refer to The Gardens at Heritage Green Condominium Association, Inc., a Tennessee non-profit corporation, and its successors and assigns.

Section 2. "Board of Directors" or "Board" shall mean and refer to the group or body of persons elected in accordance with the provisions of the Charter, the Bylaws and the statutes and regulations of the State of Tennessee, in which group or body is vested the management of the affairs of the Association.

Section 3. "Bylaws" shall mean and refer to the Bylaws of the Association, a copy of which is attached as Exhibit D, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Master Deed, the Articles and the statutes and regulations of the State of Tennessee.

Section 4. "Charter" shall mean and refer to the Charter of the Association, a copy of which is attached as Exhibit C, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Master Deed, the Bylaws and the statutes and regulations of the State of Tennessee.

Section 5. "Common Elements" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, including the General Common Elements and Limited Common Elements.

Section 6. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserves, an as may be found to be necessary and appropriate by the Board pursuant to this Master Deed or pursuant to the Charter or the Bylaws.

Section 7. "Eligible Mortgage Holder" shall mean and refer to any holder (as evidenced by an instrument recorded with the Register) of a First Mortgage who or which shall have made written request to the Association for notice of any proposed action that, pursuant to Article XII, Section 2 hereof or Article XII, Section 12 hereof, requires the consent of a specified percentage of Eligible Mortgage Holders (which written request must contain the name and address of said Eligible Mortgage Holder and the lot or unit number or street address of the Unit securing the First Mortgage held by said Eligible Mortgage Holder).

Section 8. "First Mortgage" shall mean and refer to a Mortgage or Deed of Trust secured by a Unit which has priority over any and all other Mortgages or Deeds of Trust secured by such Unit.

Section 9. "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, elevators, basements, mechanical equipment areas, storage areas, furnace rooms, stairways, walkways, driveways (unless designated as Limited Common Elements on the Plat), outside parking areas, gardens, lakes, recreational areas and facilities which are now or hereafter contained within the Property and are not designated 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 Property desirably or rationally of common use or necessary or convenient for the Property's existence, maintenance and safety, and all areas and facilities designated as General Common Elements herein and 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.

Section 10. "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 an 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, roofs, floors and ceilings, doors, vestibules, windows, balconies or patios, decks, porches, entryways, stairways, walkways, driveways, gardens, courtyards, storage areas, 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 Unit, agrees to the designation of Limited Common Elements herein and in the Plat.

Section 11. "Majority of the Owners" mean the owners of more than fifty percent (50%) in the aggregate of the undivided ownership interest in the Common Elements. Any specified percentage of Owners means that percentage of Owners who in the aggregate own such specified percentage of the entire undivided ownership of the Common Elements.

Section 12. "Master Deed" shall mean this instrument by which the Property is submitted to the provisions of the Act, as the Master Deed may be amended from time to time.

Section 13. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein, provided, however, that there shall be only one Class "A" membership for each Unit, as further provided in Article IV below.

Section 14. "Mortgage" shall include a recorded deed of trust, as well as a recorded mortgage, which, in either case, is secured by a Unit or any other part of the Property.

Section 15. "Mortgagee" shall include a beneficiary or holder of a recorded deed of trust, as well as a mortgagee under a recorded mortgage, which, in either case, is secured by a Unit or any other part of the Property.

Section 16. "Mortgagor" shall include the trustor of a recorded deed of trust, as well as a mortgagor under a recorded mortgage which, in either case, is secured by a Unit or any other part of the Property.

Section 17. "Owner" shall mean and refer to the owner (as evidenced by an instrument recorded with the Register) whether one or more persons or entities, of fee simple title to a Unit which is part of the Property or, in the case of any valid and outstanding executory agreement of sale recorded with the Register with respect to a Unit, the seller under such agreement of sale. The term "Owner" shall exclude in all cases any party holding an interest merely as security for the performance of an obligation.

Section 18. "Parcel" or "Parcels" shall mean and refer to separately designated, developed residential areas initially or subsequently subjected to this Master Deed. In the absence of a specific provision to the contrary in the instrument subjecting additional property to this Master Deed, each piece or portion of real property subject to this Master Deed, from the date of recordation of such instrument, shall be considered a separate and distinct parcel; provided, however, that Developer (with the consent of the owner thereof, if other than Developer) may designate in any instrument adding property to the terms and conditions of this Master Deed that such property shall constitute a part of any parcel theretofore subject to this Master Deed.

Section 19. "Person" means a natural person, corporation, partnership, trustee or other legal entity capable of holding title to real property.

Section 20. "Plat" means the plats of survey of the Property and/or the floor and elevation plans and drawings of all Units in the Property submitted to the provisions of the Act, the initial version of which is attached hereto as Exhibit "B" and made a part hereof. "Plat" also includes any future revisions of or supplements to the Plat, when recorded, which may change the proposed location of Units to be constructed or identify the actual location of Units that have been constructed. In interpreting the Plat or any deed or other instrument affecting a Unit, the boundaries of the Unit constructed or reconstructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of the settling or lateral movement of the Unit and regardless of minor variances between boundaries shown on the Plat and those of the Unit.

Section 21. "Property" shall mean and refer to the real property described in Exhibit "A" attached hereto and shall further refer to such additional property as may hereafter be subjected to this Master Deed or which is now or may hereafter be owned in fee simple by the Association.

Section 22. "Register" shall mean and refer to the Register for Hamilton County, Tennessee, or such other governmental authority, office or official with which or whom the applicable laws of the State of Tennessee prescribe that documents affecting title to real property in the area including the Property are to be recorded or filed for public record. Further, the term "recorded" shall include "filed" or "lodged" or any similar term indicating placing such an instrument of public record with the Register.

Section 23. "Residential Association" shall mean any homeowners, condominium or other such association created with respect to property now or hereafter subjected to this Master Deed containing (or to contain) units, homes, apartments or other structures for residential purposes, but shall not include the Association.

Section 24. "Unit" means "Apartment" as defined in the Act, but shall not include the Common Elements. A Unit does not include an exclusive interest in the underlying real estate, other than as a Limited Common Element. Specifically, "Unit" means a part of the Property designated and intended for any type of independent use so specified as a Unit and listed on the Plat, and including the garage designated on the Plat as part of a Unit. The boundary lines of each Unit shall be the undecorated and/or unfinished interior surfaces of its perimeter walls, lowermost floors and uppermost ceilings and the interior surfaces of the door and door frames, 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. If a Unit includes an attic, the reference to "uppermost ceilings" in the preceding sentence shall mean the lowermost surface of the rafters or other similar structures supporting the roof. However, a Unit shall not include pipes, ducts, wires, conduits and other facilities running through any interior wall or partition for the furnishing of utilities or other services to other Units and/or the Common Elements. If any chutes, flues, ducts, pipes, conduits, wires, compressors, furnaces, hot water heaters, HV AC systems, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a Unit, any portions thereof serving only that Unit 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 that form any part of the finished interior surfaces of the walls, floors and ceilings constituting the perimeter boundaries of such area. Any Unit may be jointly or commonly owned by more than one person. Notwithstanding the foregoing, for the purpose of measuring the Unit Square Footage and only for that purpose, the horizontal boundary line of a Unit shall be the outermost stud face of a perimeter wall of a Unit, exclusive of the Unit's bay window alcove, if any, and exclusive of the Unit's garage, and further shall not include the attic space above the Unit or the foundation or crawl space beneath the Unit.

ARTICLE III
Property Rights

Any conveyance of a Unit shall be deemed also to convey the undivided interest of the Owner thereof in the Common Elements, subject to any adjustment made necessary by the adjustment in the total number of units constructed by Developer. Every Unit Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Elements, subject to any restrictions or limitations contained herein or in any instrument conveying to the Association or subjecting to this Master Deed the Property, and subject further to the reasonable rules and regulations of the Association. Any Owner may assign their right of enjoyment to (and share the same with) the members of their household and assign the same to and share the same with their tenants and invitees, subject to the provisions of this Master Deed and to reasonable regulation by the Board and otherwise in accordance with such procedures as the Board may adopt.

ARTICLE IV
Membership and Voting Rights

Section 1. Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

- (a) Class "A". There shall be one Class "A" membership in the Association for each Unit. Each such membership shall be held by the Owner (from time to time) of such Unit and

shall be appurtenant to and may not be separated from ownership of such Unit. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more persons, shall have more than one membership per Unit owned. In the event any Unit is owned by two or more persons or entities, whether by joint tenancy, tenancy in common or otherwise, the membership as to such Unit shall be joint, provided, however, that such owners shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall make such designation and such designation shall be binding for all purposes. In no event shall more than one (1) Class "A" membership exist for each Unit.

(b) Class "B". Class "B" members shall be Developer and any assignee of all or any part of Developer's Class "B" membership rights.

Section 2.: Voting. The voting rights of the Class "A" and Class "B" members are as

(a) Class "A". Each Class "A" member shall be entitled on all issues to one (1) vote for each Unit with respect to which such member holds the interest required for membership by Section I of this Article IV. When more than one person holds such interest in any Unit, there shall be only one (1) vote with respect to such Unit, which vote shall be exercised by the person designated to exercise the power to cast such vote, as provided in Section 1 of this Article IV. Any attempt to cast a vote appurtenant to a Unit in a manner inconsistent with the aforescribed designation shall result in the suspension of the power to cast such vote until such time as such vote is cast in accordance with such designation. Any Owner of a Unit which is leased or which is subject to a valid, outstanding and recorded executory agreement of sale may, in the lease, agreement of sale or other written instrument, assign the voting right appurtenant to the Unit to the lessee or purchaser of the Unit under such lease or agreement of sale, as applicable, provided that a copy of such instrument is furnished to the Secretary of the Association prior to any meeting.

(b) Class "B". The Class "B" member or members shall originally be entitled to one hundred twenty nine (129) votes; provided, however, this number shall be adjusted for any change in the number of units to be built and decreased by one (1) vote for each Class "A" vote existing at any one time. Developer shall have the right, at any time and from time to time, to assign all or any part of its voting rights appurtenant to its Class "B" membership rights (as well as all or any other rights appurtenant thereto) to one or more persons acquiring, for purposes of development and sale, any part of the Property. Further, Developer shall have the right, at any time and from time to time, to designate an individual or individuals (including, but not limited to, officers or employees of, or other individuals affiliated with, Developer) to exercise Developer's voting rights (whether appurtenant to its Class "A" or Class "B" memberships),

Section 3. Developer Rights. Until the first Unit is conveyed to a retail purchaser, Developer shall have no obligation to form the Association and all rights, powers, privileges and duties of the Association shall be exercised by the Developer.

ARTICLE V Maintenance

The Association shall maintain and keep, in accordance with the terms of this Master

Deed, the Common Elements, and the cost of such maintenance shall be a Common Expense of the Association. This maintenance shall include, but not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures and improvements situated upon the Common Elements, including any perimeter or boundary walls;

(ii) Exclusive authority to adjust losses under policies in force on property owned by the Association shall be vested in the Board;

(iii) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual owners, occupants or their Mortgagees, and the insurance carried by the Association shall be primary;

(iv) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Board or the Owners and their respective tenants, servants, agents and guests (if securing same will impose on the Association no additional cost or only such reasonable cost as the Board may determine in its discretion);

(v) Each policy providing such insurance coverage shall require the applicable insurer to give not less than ten (10) days written notice to the Association, and to each holder of a First Mortgage which shall have given such insurer written notice of such holder's interest in the Property (which notice must include the name and address of such holder), of any cancellation or material modification of such policy.

(e) Fidelity Bonds. The Board, acting on behalf of the Association, shall obtain and maintain at all times adequate fidelity bond coverage to protect against dishonest acts on the part of officers, directors and employees of the Association and all others who handle, or are responsible for handling, funds held or administered by the Association, whether or not such officers, directors, employees or others receive compensation for services they render to or on behalf of the Association. Any independent management agent which handles funds for the Association shall also obtain (and pay for) such fidelity bond coverage with respect to its own activities (and those of its directors, officers and employees, whether or not such directors, officers or employees receive compensation for services rendered). Such fidelity bonds (i) shall name the Association as obligee, (ii) shall be issued by one or more companies authorized to issue such bonds in the State of Tennessee and (iii) shall be in an amount sufficient to cover the maximum total of funds reasonably expected by the Association to be in the custody of the Association or such agent at any time while such bond is in force, but in no event shall the amount of such fidelity bond coverage be less than the sum of three (3) months' general assessments on all Units, plus the total funds held in the Association's reserves. Each such fidelity bond shall provide that the issuer thereof shall provide not less than ten (10) days written notice to the Association and to each Eligible Mortgage Holder before such bond may be cancelled or substantially modified for any reason,

(f) Cost of Insurance. All premiums for the insurance or bonds required to be obtained by the Board by this Section 1 shall be Common Expenses (except that, as provided in Subsection 1 (e) above, the cost of the fidelity bond required to be furnished by any independent management agent shall be paid by such agent).

Section 2 Insurance to be Obtained by the Owners.

(a) Public Liability Insurance. It shall be the individual responsibility of each Owner to provide, as such Owner sees fit and at such Owner's sole expense, comprehensive public liability insurance against loss or liability for damages and any expense of defending against any claim for damages which might result from the ownership, use or occupancy of such Owner's Unit.

(b) Hazard Insurance. It shall be the individual responsibility of each Owner to provide, as such Owner sees fit and at such Owner's sole expense, fire, liability, theft and any other insurance covering fixtures and personal property within such Owner's Unit.

ARTICLE VI
Insurance and Fidelity Bonds; Casualty Losses

Section 1. Insurance to be Obtained by the Association.

(a) Hazard Insurance. The Board, acting on behalf of the Association, shall obtain and maintain at all times insurance for all insurable improvements on the Property, exclusive of the additions within, improvements to and decorating of the Units or Limited Common Elements, by the Owner, against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Tennessee, against all other perils customarily covered for similar types of projects (including those covered by the standard "all risk" endorsement available from time to time in the State of Tennessee), and against loss or damage due to vandalism and malicious mischief. Said insurance shall be in an amount equal to 100% of the current replacement cost, from time to time, of all such insurable improvements (excluding land, foundations, excavations and other items usually excluded from such insurance coverage). The policy or policies providing such insurance shall also contain (if available at no additional cost or at such additional cost as may be determined to be reasonable by the Board in its discretion) the following endorsements (or the equivalents): (i) "agreed amount" and "inflation protection" endorsements; (ii) "increased cost of construction" endorsement (iii) "contingent liability from operation of building laws or codes" endorsement (iv) "demolition cost" endorsement; and (v) a steam boiler coverage endorsement.

(b) Liability Insurance. The Board, acting on behalf of the Association, shall obtain and maintain at all times a comprehensive public liability policy covering the Association for all damage or injury caused by the negligence of the Association or any of its agents, and at the Board's discretion and if reasonably available, directors' and officers' liability insurance. Said comprehensive public liability policy shall provide coverage of not less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage for any single occurrence.

(c) Flood Insurance. In the event any part of the Common Area is in a "special flood hazard area," as defined by the Federal Emergency Management Agency (or its successors), the Board, acting on behalf of the Association, shall obtain (and maintain at all times during which any part of the Common Area is in such a "special flood hazard area") a "master" or "blanket" policy of flood insurance covering any personal property owned from time to time by the Association (to the extent such personal property is normally covered by the standard flood insurance policy available from time to time in the State of Tennessee). Said insurance shall be equal to not less than the lesser of (i) 100% of the current replacement cost, from time to time, of all such insurable improvements (and insurable personal property owned by the Association)

located in the "special flood hazard area," or (ii) the maximum coverage available for such insurable improvements and insurable personal property under the National Flood Insurance Program.

(d) General Provisions Governing Insurance. The insurance required to be obtained under Subsection 1 (a), 1 (b) and 1 (c) of this Article VI shall be written in the name of the Association as trustee for each of the Owners and for each holder of a Mortgage secured by a Unit (as their respective interests may appear) and shall be governed by the provisions hereinafter set forth:

(i) All policies shall be written with one or more companies authorized to provide such insurance in the State of Tennessee;

Section 2. Casualty Losses.

(a) Damage and Destruction.

(i) Immediately after any damage or destruction by fire or other casualty to all or any part of the property required to be insured by the Association under Section 1 above, the Board or its duly authorized agent shall (a) proceed with the filing and adjustment of all claims arising under such insurance, (b) obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property, and (c) upon receipt of the proceeds of such insurance and except as is otherwise provided herein, use such proceeds to repair or reconstruct the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the improvements in question to substantially the same condition as that in which it existed prior to the fire or other casualty (or, where applicable, replacing the damaged or destroyed property with property substantially similar to the damaged or destroyed property as it existed prior to such damage or destruction).

(ii) Any major damage or destruction to the Property shall be repaired or reconstructed unless, at a special meeting of the Members of the Association duly noticed and convened within sixty (60) days after the occurrence of such damage or destruction, the Members determine, by a vote of not less than seventy-five percent (75%) of all votes represented at such meeting (either in person or by valid proxy), not to so repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made or become available; provided, however, that such extension shall not exceed sixty (60) days. No Mortgagee (except for one holding a Mortgage executed and delivered by the Association upon any portion of the Common Area) shall have the right to participate in the determination of whether any Common Area damage or destruction shall be repaired or reconstructed. The Board shall determine whether any minor damage or destruction to the Common Area should be repaired or reconstructed.

(iii) In the event that it is determined by the Association in the manner described above that the damage or destruction of any part of the improvements on the Property shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event such property shall be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area.

(b) Excess or Deficiency of Proceeds. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy an equal assessment against the Owner of each Unit. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be used to meet Common Expenses.

Section 3. EMINENT DOMAIN

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

(i) 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;

(ii) 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

(iii) 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.

(b) Owners and Mortgagees. Each Owner and each Mortgagee 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 Owner's or Mortgagee's own expense.

(c) 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 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:

(i) 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 Owner or lienor, shall first be allocated and paid to the persons who incurred same.

(ii) 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 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 Owner of the Unit and the Mortgagee holding the recorded mortgage.

(iii) If not all of the Property is taken and the remainder thereof cannot, or, in the opinion of the Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and of the Mortgagees 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 Owners and their Mortgagees, if any, in the proportions and manner specified in subparagraph (b) of this Paragraph. The respective 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 reasonably tenantable and habitable. Such refusal option shall be given and exercised as follows: The Board shall notify each such 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 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 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 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 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 Owner but shall not sell the same at any lower price or more favorable terms without again giving such Owner the same right of refusal in the same manner.

(iv) 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:

(A) 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. The amount of such diminution, and the value of any remainder

interest in any such Unit, if not determined by the Court, shall be:

(B) The amount allocated to each Unit which in the judgement 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 Owner of, and Mortgagee or Mortgagees 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 Owners. Such conveyance shall convey good and marketable title, free and clear of any encumbrances.

(C) 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 Owners of, and Mortgagees on, the Units that have not been eliminated and which have suffered diminution as above determined, to compensate such 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 Owner will be proportionately as well off as before the taking; provided that compensation distributed to a Owner for diminution in value shall in all such cases be made only upon a simultaneous and equitable adjustment in such Owner's undivided percentage interest in the Common Elements.

(v) If any Unit shall have been specially benefited by the taking, or by any such restoration or replacement, the 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 Owner and his/her Unit shall receive and accept a correspondingly acceptable adjustment in such Owner's undivided percentage interest in the Common Elements.

(vi) 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 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 Owners in The Renaissance in the same manner as Common Expenses.

(d) **Board's Power.** The Board is hereby appointed as attorney-in-fact for each Owner to convey any Owner's and Mortgagee'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 Paragraph, including without limitation amendments to this Master Deed and/or the Plat to reflect a taking and its resulting effect on the remaining 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.

(e) **Execution of Documents.** Each Owner and Mortgagee 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 Paragraph, and shall do all such other things reasonably necessary or incidental to the specific requirements of this Paragraph.

(f) **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 Paragraph 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 Owner, any Mortgagee 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. Any Owner, Mortgagee, or other person dissatisfied with any determination or action of the Board, insofar as adversely affecting any Property in which he has a legal or equitable interest, shall be entitled to seek a determination by the Grievance Committee as provided herein, and after such determination, to seek other remedies provided by law.

(g) **Termination of Regime.** The word "taken" as used in this Paragraph 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 Owner, and with the exception for the first refusal rights of Owners hereunder, the Master Deed, Bylaws and Plat shall cease to apply.

ARTICLE VII

Rights and Obligations of the Association

Section 1. **The Common Area.** The Association, subject to the rights of the Owners set forth in this Master Deed, shall be responsible for the exclusive management and control of the Common Area and shall keep it in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof

Section 2. **Personal Property and Real Property for Common Use.** The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property, except that, subject to the provisions of Article XII, Section 4 hereof, no dedication, sale or transfer of all or any part of the Common Area shall be made or effective unless approved by not less than two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to all or any part of the

Property as may be conveyed or assigned to the Association by Developer (or Developer's successor or assigns). The portion of the Property intended to be Common Elements shall be transferred to the Association prior to conveyance of the first Unit by Developer to an Owner (other than Developer). The portions of the Property intended to be Common Elements serving less than all of the Property shall be transferred to the Association prior to conveyance of the first Unit in the area to be served by such Common Elements by Developer to an Owner (other than Developer).

Section 4. Rules and Regulations. The Association, through the Board, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Master Deed. Sanctions for violation of such rules and regulations may be imposed by the Board and may include suspension of the right to vote and the right to use the recreational facilities of the Common Area, and where approved by a majority vote of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose, may also include reasonable monetary fines. No suspension of an Owner's right to vote or to use the recreational facilities on the Common Area due to a violation of the rules and regulations of the Association may be for a period longer than sixty (60) days.

Section 5. Availability of Books, Records and Other Documents. The Association shall maintain complete and current copies of this Master Deed, the Articles, the Bylaws and all rules and regulations of the Association (as well as any amendments to the foregoing) and of the books, records and financial statements of the Association, and, upon the prior written request of the Association by any Owner or by any holder, insurer or guarantor of the First Mortgage, shall make the same available for inspection, at reasonable times and under reasonable circumstances, by such Owner or such holder, insurer or guarantor.

Section 6. Audited Financial Statements. In the event any holder, insurer or guarantor of the First Mortgage submits to the Association a written request for an audited financial statement of the Association for the most recently concluded fiscal year of the Association, the Association shall promptly deliver such an audited financial statement to such holder, insurer or guarantor, and in the event no such audited financial statement has been prepared for the most recently concluded fiscal year, the Association shall cause the same to be prepared and delivered to such holder, insurer or guarantor as soon as reasonably possible. The cost of having such an audited financial statement prepared shall be a Common Expense.

Section 7. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuation any such right or privilege.

Section 8. Owner Complaints.

(a) **Scope.** The procedures set forth in this Paragraph for 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. This Paragraph shall not control disputes involving the Developer.

(b) **Grievance Committee.** There shall be established by the Board a Grievance Committee (referred to in this Paragraph as the "Committee") to receive and consider all Owner complaints. The Committee shall be composed of the President of the Association and two other Owners appointed by and serving at the pleasure of the Board of Directors.

(c) **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 President of the Association and sent in the manner provided herein for sending notices.

(d) **Consideration by the Committee.** Within twenty (20) days of receipt of a complaint, the Committee 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 subparagraph (e) of this Paragraph; but if complainant does not, the decision shall be final and binding upon the complainant.

(e) **Hearing Before the Committee.** Within ten (10) days after notice of the decision of the Committee, the complainant may, in writing addressed to the President of the Association, request a hearing before the Committee. 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 subparagraph (a) of this Paragraph, the decision shall be final and binding upon the complainant.

(f) **Questions of Law.** Unless and until the matter is submitted to arbitration as provided below, 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.

(g) **Questions of Law or Fact: Arbitration.** If there shall be any dispute as to any material fact or a dispute of a question of law, either the Committee or the complainant may, at their option, within ten (10) days after notice of the decision as provided for in this Paragraph, 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.

(h) **Exclusive Remedy.** The remedy for Owner complaints provided herein shall be exclusive of any other remedy, and no 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.

(i) **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.

Section 9. **Dispute Resolution.**

(a) **Scope.** Any controversy, dispute, or disagreement involving the Developer arising out of or relating to this Master Deed, the design or construction of any Unit or the Common Elements or in any way related to the Property (including tort actions and actions regarding the relationship of the parties with respect to the subject matter to this Master Deed), or the breach of this Master Deed, (referred to in this Paragraph as a "dispute") shall be settled according to the procedure set forth in this Paragraph. This Paragraph shall be binding on Owners, Mortgagees, the Board and the Association.

(b) **Informal Conference.** In the event a dispute arises between the parties, each party to the dispute shall be obligated to meet and confer with the other party to the dispute in good faith, on reasonable notice, and at a mutually agreeable location. The parties agree that if either party refuses to participate in such a conference, or if such a conference fails to produce a mutually acceptable resolution of the dispute within a mutually acceptable period of time, any party to the dispute may submit the matter to mediation or arbitration pursuant to this Paragraph.

(c) **Mediation.** In the event a dispute arises between the parties that cannot be settled by informal conference as set forth above, the parties may, on mutual agreement, submit the matter to mediation to be conducted in Chattanooga, Tennessee, in accordance with the Rules of Procedure for Mediation of Commercial Disputes of the American Arbitration Association. The consent of any party to the dispute to such mediation may be withdrawn at any time, without cause.

(d) **Arbitration.** In the event a dispute cannot be settled by informal conference or mediation as set forth above, or in the event any party to the dispute refuses or withdraws consent to mediation, the matter shall be settled by binding arbitration before a single arbitrator conducted in Chattanooga, Tennessee, in accordance with the Rules of Procedure for Arbitration of Commercial Disputes of the American Arbitration Association to the extent such procedures are not inconsistent with this Agreement. The same person may serve as both mediator and arbitrator only with the consent of all parties to the dispute. The arbitrator will only have the authority to award actual direct damages, and will not have the authority to award consequential or punitive damages. Any award rendered by the arbitrator shall be final and binding upon the parties hereto, and judgment upon any such award may be entered in any court having jurisdiction thereof. The fees and expenses of the arbitrator shall be borne equally by the parties. Each party shall pay its own fees and costs relating to any arbitration proceedings, including attorneys' fees. The parties to this Agreement agree that any action for the enforcement of an arbitration award or any judgment entered by any court in respect thereof shall be brought in the courts of state courts of Hamilton County, Tennessee, or in the U.S. District Court for the Eastern District of Tennessee, and each party consents to the personal and subject matter jurisdictions of such courts.

Section 10. Trustee as Owner. 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 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. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of any such lien or

obligation shall continue to be a charge or lien upon the Unit and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfer of title to such Unit.

ARTICLE VIII Assessments

Section 1. Creation of Assessments. In order to provide funds to enable the Association to meet its financial and other obligations and to create appropriate reserves, there is hereby created a right of assessment exercisable by the Board. General Assessments and Special Assessments shall be allocated equally among all Units and shall be for Common Expenses.

Each Owner, by acceptance of his, her or its deed with respect to one or more Units, is deemed to covenant and agree to pay these assessments. All such assessments, together with interest from the date due at a rate equal to ten percent (10%) per annum, and together with such costs and reasonable attorneys' fees as may be incurred in seeking to collect such assessments, shall be a charge on and shall be a continuing lien upon the Unit against which each assessment is made.

Each such assessment, together with interest, costs and reasonable attorneys' fees as provided above, shall also be the personal obligation of the person who or which was the Owner of such Unit at the time the assessment arose with respect to such Unit, provided, that the personal obligation for delinquent assessments shall not pass to the successor in title of such Owner unless expressly assumed by such successors.

General Assessments for each fiscal year shall be due and payable in monthly installments on or before the first day of each month. Special Assessments, if any, shall be paid in such manner and on such dates as may be fixed by the Board. In addition to any other powers of collection or enforcement granted hereunder, in the event any assessments with respect to a Unit are delinquent, the Board shall have the right, in its sole discretion, to accelerate the date on which assessments with respect to such Unit are due and payable.

The General Assessments provided for herein shall not commence until the conveyance of the first Unit to a retail purchaser. Except as otherwise provided herein, assessments shall be payable in respect of each Unit from the date which is the earlier of (a) the closing of the sale of such Unit by Developer to an Owner (other than Developer), or (b) thirty (30) days after the issuance by the City of Chattanooga, Tennessee, or other applicable governmental agency, of a certificate of occupancy or similar document with respect to such Unit. As to any Unit conveyed by Developer to an Owner, assessments as to such Unit shall be prorated as of the closing of the sale of such Unit. In the event Developer elects at any time to sell undeveloped property to any person, assessments with respect to Units eventually located thereon shall commence and be prorated as of the date of the issuance by the City of Chattanooga, Tennessee (or other applicable local governmental agency), of a certificate of occupancy or similar document with respect to each such Unit.

No Owner shall be relieved of his, her or its obligation to pay any of the assessments provided or permitted hereunder by abandoning or not using his, her or its Unit or the Common Area.

The Association shall, upon the written request of any Owner or the holder, insurer or guarantor of any Mortgage and upon payment of such reasonable charge as may be determined by the Board, furnish to the requesting party a certificate, executed by an officer of the Association, stating the date to which assessments with respect to the Unit specified in the request have been paid and the amount, if any, of any assessments which have been levied with respect to said Unit but remain unpaid as of the date of such certificate, which certificate shall be binding upon the Association as to the matters set forth therein as of the date thereof

Section 2. Computation of Assessments: Annual Budget. The Board shall prepare and adopt an estimated annual budget for each fiscal year of the Association. Such budget shall take into account the estimated Common Expenses and cash requirements of the Association for the year. The annual budget shall also take into account the estimated net available cash income for the year, if any, from the operation or use of any of the Common Elements. The annual budget shall provide for a reserve for contingencies for the year (or for subsequent fiscal years) and a reserve for replacements, all in such reasonably adequate amounts as shall be determined by the Board. The Board shall cause a copy of the budget and a statement of the amount of the assessments to be levied against each Unit for the following fiscal year to be delivered or mailed to each Owner not less than sixty (60) days, following the meeting of the Board at which such budget shall have been adopted.

Section 3. Special Assessments. In addition to the General Assessments, the Association may levy a Special Assessment in any year, provided, however, that any Special Assessment shall be effective only with the approval of not less than two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called and convened to consider such Special Assessment.

Section 4. Lien for Assessments. The assessments provided for herein shall constitute a lien on each Unit prior and superior to all other liens, except (1) all taxes, bands, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided for the foreclosure of mortgages. The sale or transfer of any Unit pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the assessments provided for herein as to payments which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Unit from liability for any assessments becoming due after such sale or transfer, or from the lien thereof.

The Association shall have the power and authority to bid for any Unit at any sale to foreclose the Association's lien on the Unit, and to acquire and hold, lease, mortgage and convey the same. During the period any Unit is owned by the Association following foreclosure, no right to vote shall be exercised with respect to such Unit, nor shall any assessment (whether General or Special) be assessed or levied on or with respect to such Unit, provided, however, that the Association's acquisition and ownership of a Unit under such circumstances shall not be deemed to convert the same into Common Elements. Suit to recover a money judgment for unpaid assessments, rent, interest and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 5. Notice and Quorum for Meeting to Consider Special Assessments and Certain Increases in General Assessments. Notwithstanding any other provision hereof or of the Charter, the Bylaws or the rules and regulations of the Association, written notice of any meeting called for the purpose of approving the establishment of any Special Assessment, as required by Article

VIII, Section 3 hereof, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment or increase in General Assessment, a quorum shall consist of sixty percent (60%) of the votes in each class of Members (whether represented in person or by valid proxy), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half(1/2) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

ARTICLE IX

Development of Units: Supplemental Master Deeds and Plats

Section 1. Construction of Units and Common Elements. Developer shall have the right to construct the Units and Common Elements on such schedule as Developer shall elect. Following the occupancy of the first Unit by an Owner other than Developer, Developer shall use reasonable efforts to minimize the adverse impact of construction on the use and enjoyment of the Units so occupied.

Section 2. Supplemental Master Deeds and Plats. Developer shall have the right to record supplemental Master Deeds and Plats, without the joinder of any other party, to (a) modify the number and location of Units, (b) adjust the undivided percentage interests in the Common Elements to take into account any adjustment in the number of units, and (c) designate and redesignate Common Elements, provided such supplemental Master Deeds and Plats do not alter the location of existing roads and drives reflected in the original Plat, except to extend one or more of said roads or drives.

Upon the recordation of each supplemental Master Deed and Plat, the revised schedule of undivided percentage interests in the Common Elements set forth therein shall automatically become effective as provided in this Master Deed.

Section 3. Reservation of Easements. Developer reserves transferable easements in, on, over, across, through and under the Common Elements for the purpose of making improvements and doing all things reasonably necessary and proper in connection therewith and in connection with completion of the Units and Common Elements.

Section 4. Irrevocable Power. The authority and easements granted to Developer in this Article IX are irrevocable and not subject to amendment or modification, any other provision of this Master Deed to the contrary notwithstanding. The rights of the Developer granted in this Article IX shall constitute a power coupled with an interest which may not be revoked by death or otherwise.

ARTICLE X

Use Restrictions

Section I. Residential Purpose. The Units shall be used only for residential and related purposes. No Unit or any other part thereof shall be used, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, vending or other similar purpose, except for (a) use by Developer in connection with its construction and sales activities with respect to the Property, and (b) for use by an Owner for a home office to the extent permitted by law.

Section 2. Renting or Leasing of Units. Units may be rented or leased only by written leases and subject to the following restrictions: All tenants shall be subject to the terms and conditions of this Master Deed, the Charter, the Bylaws and the rules and regulations adopted by the Board as though such tenant were an Owner. Each Owner shall cause his, her or its tenant, occupant or persons living with such Owner or with his, her or its tenant to comply with the Master Deed, the Articles, the Bylaws and the rules and regulations adopted by the Board, and shall be responsible and liable for all violations and losses caused by such tenants or occupants, notwithstanding the fact that such occupants of the Unit are fully liable for any violation of said documents and regulations. A copy of the lease for a Unit will be given to the Board.

In the event that a tenant, occupant or person living with the tenant violates a provision of this Master Deed, the Charter, the Bylaws or rules and regulations adopted by the Board, the Association shall have the power to bring an action or suit against the tenant to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity. The Association's costs in doing so, including, but not limited to, reasonable attorney's fees, together with interest as provided in Article XII, Section 8 hereof, shall be reimbursed by the tenant to the Association and constitute a lien on the applicable Unit which shall have the priority and may be enforced in the manner described in Article VIII, Section 4 hereof.

The Board shall also have the power to suspend the right of the tenant, occupant or person living with the tenant to use the recreational facilities on the Common Elements for any violation by the tenant, occupant or person living with the tenant of any duty imposed under this Master Deed, the Charter, the Bylaws or the rules and regulations adopted by the Board, and to impose reasonable monetary fines upon the tenant or the Owner of the applicable Unit, or both. No suspension hereunder of the right of a tenant, occupant or person living with the tenant to use the recreational facilities on the Common Elements may be for a period longer than sixty (60) days (except that the foregoing limitation shall not affect or prevent termination of the applicable lease if permitted by the terms of said lease or otherwise by applicable law).

Section 3. Miscellaneous. The Board, in its good faith discretion, is hereby authorized to grant such waivers of the restrictions contained in this Article X as it shall be appropriate in the circumstances, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's opinion, in a substantial departure from the common plan of development contemplated by this Master Deed. In addition, all portions of the Property shall continue at all times to be subject to any and all applicable zoning laws and ordinances, provided, however, that where the provisions of this Master Deed are more restrictive than such laws or ordinances, the provisions of this Master Deed shall control.

ARTICLE XI

Annexation of Additional Property

Developer contemplates, as of the date hereof, that additional, contiguous property (the "Annexable Property") may be added and annexed to the Property and subjected to the provisions of this Master Deed. Therefore, while Developer shall have no obligation or duty to so add and annex the Annexable Property to the Property or to subject the same to the provisions of this Master Deed, Developer hereby reserves the right, privilege and option to add and annex to the Property and to subject to the provisions of this Master Deed the Annexable Property, without the vote of the Members and without notice to or approval of any holder, insurer or

guarantor of any Mortgage, provided, however, that the right, privilege and option reserved in this sentence shall expire and terminate ten (10) years after the date on which this Master Deed is recorded with the Register. Except for the rights of Developer with respect to Annexable Property, additional residential property and Common Elements may be annexed to the Property only by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for that purpose, and only with the approval of the applicable percentage of Eligible Mortgage Holders, as provided in Article XII, Section 2 hereof. Further, no property may be added or annexed to the Property without the express written consent of each owner of all or any part of the property proposed to be annexed. Upon approval of any annexation of property to the Property to the extent required by this Article XI, Developer, in the case of annexation of all or any part of the Annexable Property, or the President and Secretary of the Association, in the case of any other annexation, shall execute, acknowledge and record with the Register an instrument effecting and evidencing such annexation (which instrument shall also be duly executed and acknowledged by each owner of all or any part of the property being annexed), and such annexation shall be deemed effective only upon such recordation.

Upon the effective date of any such annexation, as provided above, (a) the property so annexed shall immediately be and become a part of the Property and subject to all of the provisions hereof, (b) any Unit then or thereafter located upon the annexed property, and the Owner of such Unit, shall thereupon be subject to the provisions of this Master Deed, (c) any portion of the property annexed which is designated or declared to be Common Elements shall thereupon be subject to the provisions of this Master Deed, and (d) improvements then or thereafter situated upon the annexed property shall be consistent, in terms of quality of construction, with the improvements situated upon the Property prior to such annexation.

ARTICLE XII General Provisions

Section 1. Term. The covenants, conditions and restrictions of this Master Deed (a) shall run with and bind the Property, (b) shall inure to the benefit of and shall be enforceable by the Association or the owner of any property subject to this Master Deed, their respective legal representatives, heirs, successors and assigns, and (c) shall remain in full force and effect until January 1, 2050, at which time said conditions, covenants and restrictions, unless revoked by an affirmative vote of members holding, personally or by valid proxy, not less than seventy-five percent (75%) of all votes eligible to be cast at a meeting of Members, shall automatically be extended for successive periods often (10) years each, until revoked in the manner provided above. Notwithstanding any such revocation of this Master Deed, each Owner of a Unit (and such Owner's occupants, tenants, residents, guests and invitees) shall nevertheless have a permanent easement across the Common Elements for access to such Unit and for access to and use of such recreational facilities as may exist on the Common Elements at the time of such revocation.

Section 2. Amendment. Except as otherwise provided herein, this Master Deed may be amended only by the affirmative vote (in person or by proxy) or written consent of not less than seventy-five percent (75%) of the votes in each class of Members. No vote of Class A Members shall be required until there are Class A Members. No amendment shall be effective unless and until such amendment is recorded with the Register. In addition to and notwithstanding the foregoing, no amendment of a material nature to this Master Deed (or to the Charter or the Bylaws) shall be effective unless approved by Eligible Mortgage Holders representing at least

fifty-one percent (51%) of all Units subject to First Mortgages held by Eligible Mortgage Holders. A change to any of the following will be considered to be a change of a material nature:

- (i) provisions relating to voting rights in the Association;
- (ii) provisions relating to assessments, assessment liens or subordination of assessments;
- (iii) provisions relating to reserves for maintenance and repairs;
- (iv) provisions relating to Owner's rights to use the Common Elements;
- (v) boundaries of any Unit;
- (vi) conversion of any Unit into Common Elements or vice versa;
- (vii) addition or annexation of property to, or withdrawal of property from, the Property, or addition or annexation of any property to, or withdrawal of any property from, the Common Elements (except to the limited extent certain additions or annexations are expressly permitted without approval of or notice to the holders, insurers or guarantors of any Mortgage by Article XI of this Master Deed);
- (viii) provisions relating to insurance or fidelity bonds;
- (ix) provisions relating to the leasing of Units;
- (x) provisions relating to the right of an Owner to sell or transfer such Owner's Unit;
- (xi) restoration or repair of any structures or improvements on the Common Elements following a hazard damage or condemnation in a manner other than as specified in this Master Deed;
- (xii) any action to dissolve or otherwise terminate the Association or the legal status of the Property after substantial destruction or condemnation of improvements on the Property occurs; or
- (xiii) any provisions that expressly benefit the holders, insurers or guarantors of Mortgages.

In the event a proposed addition, amendment or change to this Master Deed, the Charter or the Bylaws is deemed by the Board as not being of a material nature, the Association shall nevertheless provide written notice to each Eligible Mortgage Holder of the proposed addition, amendment or change (and of the Board's determination that the same is not of a material nature), and each Eligible Mortgage Holder which shall not have made written response to such notice within thirty (30) days after the date of such notice shall automatically be deemed to have approved the proposed addition, amendment or change.

Section 3. Indemnification. The Association shall indemnify every officer and director of the Association against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director of the Association in connection with any action, suit, or

other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director of the Association, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except indirectly to the extent that such officers or directors may also be Members of the Association and therefore subject to assessment to fund a liability of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director of the Association, may be entitled.

Section 4. Easements for Utilities, Etc. There is hereby reserved to the Association the power to grant blanket easements upon, across, over and under all of the Common Elements for ingress, egress, installation, replacing, repairing, and maintaining master television antenna systems, security and similar systems, and all utilities, including, but not limited to, water, sewers, telephones, cable television and electricity, provided, that no such easement shall interfere with a Unit or its reasonable use and such easements shall require the holder of the easement to repair any damage caused to the property of any Owner. Should any entity furnishing a service covered by the general easement herein provided request a specific easement: by separate recordable document, the Association shall have the right to grant such easement on said property in accordance with the terms hereof.

Section 5. No Partition. No person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Elements. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of title to real property which may or may not be subject to this Master Deed.

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

Section 7. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Master Deed shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until one (1) day less than ninety (90) years from the date this instrument is recorded in the Register's Office of Hamilton County, Tennessee.

Section 8. Enforcement. The Association shall have the standing and power to enforce the provisions of this Declaration and the provisions of any other recorded document pertaining to any Unit or Units and its costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest thereon from the date the costs are expended at a rate equal to ten percent (10%) per annum, shall constitute a lien on all Units owned by the Owner or Owners against whom the action is taken, which lien shall have the priority and may be enforced in the manner described in Article VIII, Section 4 hereof.

Section 9. Notices to Certain Mortgage Holders, Insurers or Guarantors. The Association shall give timely written notice of any of the following actions, events or occurrences to any holder, insurer or guarantor of a Mortgage who or which, prior to such action, event or

occurrence, shall have made written request to the Association for such notice (which written request shall state the name and address of such holder, insurer or guarantor and the unit number or street address of the Unit to which the applicable Mortgage pertains):

(a) Any condemnation or casualty loss that affects either a material portion of the Property or the Unit securing the applicable Mortgage;

(b) Any delinquency lasting sixty (60) days or more in payment of any assessments or other charges owed to the Association by the Owner of the Unit securing the applicable Mortgage;

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

(d) Any proposed action which requires the consent of a specified percent age of Eligible Mortgage Holders, as provided in Article XII, Section 2 hereof;

Section 10. Changes to Interiors of Units. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his, her or its Unit or to paint the interior of his, her or its Unit any color desired, except to the extent such remodeling or painting is visible from outside such Unit or affects the exterior appearance of such Unit.

Section 11. Dissolution or Termination of the Association or Legal Status on he Property. No action to dissolve or otherwise terminate the Association or alter the legal status of the Property for any reason other than the substantial destruction or condemnation of the Property shall be taken without the consent of Eligible Mortgage Holders representing not less than sixty-seven percent (67%) of all Units subject to First Mortgages held by Eligible Mortgage Holders.

IN WITNESS WHEREOF, the undersigned has executed this Declaration this 17th day of NOV., 2004.

DEVELOPER;

A. L. James Construction and Development, LLC

By: A. L. James
A. L. James, Member and Chief Manager

STATE OF TENNESSEE
COUNTY OF HAMILTON

Book and Page: GI 7344 946

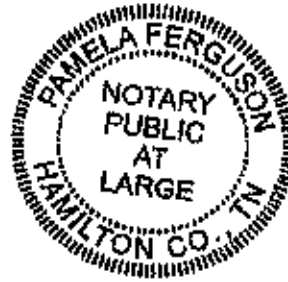
Before me personally appeared A. L. James, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be a member of A. L. James Construction and Development, LLC, the within named bargainor, a limited liability company, and that he as such member, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as a member.

Witness my hand and official seal at Chattanooga, Tennessee on this 19th day of November, 2004.

Pamela Ferguson
NOTARY PUBLIC

My Commission Expires: 02/06/2008

DOCUMENT PREPARED BY:
Patrick, Beard, Schulman & Jacoway, P.C.
Suite 202, Market Court
537 Market Street
Chattanooga, Tennessee 37402-1240



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IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE:
Being a portion of the property described in Book 1727, Page 43, et seq., in the Register's Office of Hamilton County, Tennessee, being also a part of the southwest quarter of section 24, Range 6 North or 2 South, Township 3, West of the Basis Line, Ocoee District and being more particularly described as follows: Beginning at a point in the South line of Davidson Road at the East line of the lands conveyed to the United States of America (TVA) by deed of record in Book 1775, Page 634, in said Register's Office; thence South 65 degrees 38 minutes 34 seconds East 828.40 feet along the South line of Davidson Road to the northwest corner of lands conveyed to Frank B. Laskowski and wife, Elizabeth Laskowski by deed recorded in Book 4438, Page 192, in said Register's Office; thence South 24 degrees 25 minutes 06 seconds West 304.88 feet along the West line of Laskowski, as aforesaid, and as further granted in Book 4854, Page 263, in said Register's Office; thence South 66 degrees 39 minutes 11 seconds East 116.85 feet along the South line of Laskowski to the western border of Heritage Green Subdivision, as defined by plats of record in said Register's Office in Plat Book 58, Page 109, Plat Book 58, Page 35, Plat Book 59, Page 385, Plat Book 57, Page 274, and Plat Book 62, Page 312, all in said Register's Office; thence along said western border in the following calls: South 24 degrees 50 minutes 55 seconds West 140.28 feet; North 76 degrees 36 minutes 12 seconds West 75.83 feet; south 24 degrees 43 minutes 52 seconds West 99.88 feet; South 31 degrees 47 minutes 58 seconds West 40.30 feet; South 25 degrees 18 minutes 48 seconds West 270.00 feet; South 00 degrees 10 minutes 03 seconds West 22.00 feet; South 25 degrees 18 minutes 48 seconds West 324.79 feet and South 32 degrees 16 minutes 15 seconds West 78.04 feet the Northwest corner of Lot 26, said subdivision; thence South 38 degrees 59 minutes 30 seconds West, a distance of 33.07 feet to a point in the rear line of Lot 27 said subdivision, said point being the beginning of a curve to the left having a radius of 250 feet and a central angle of 02 degrees 02 minutes 47 seconds; thence southwesterly along the arc a distance of 8.93 feet to a point in the rear line of Lot 27 said subdivision; thence along a division line of the Rhodes property described in Book 1727, Page 43, said Register's Office, North 65 degrees 01 minute 16 seconds West a distance of 383.79 feet to a point in the East line of Lot 51 said subdivision; thence North 0 degrees 20 minutes 2 seconds West, a distance of 8.03 feet to the Northeast corner of Lot 51 said subdivision; thence with the Northern line of said Lot 51, North 62 degrees 22 minutes 08 seconds West, a distance of 81.26 feet to the Northwest corner of said Lot 51; thence South 51 degrees 12 minutes 03 seconds West, a distance of 12.28 feet to a point in the western line of Lot 51 said subdivision; thence along a division line of the Rhodes property described in Book 1727, Page 43, said Register's Office, North 65 degrees 01 minute 16 seconds West, a distance of 295.66 feet to the East line of lands granted to United States of America (TVA) in Book 1775, Page 634, as aforesaid; thence along said TVA lands in the following calls: North 49 degrees 21 minutes 33 seconds East 496.95 feet; North 40 degrees 38 minutes 27 seconds West 242.64 feet and North 19

degrees 44 minutes 55 seconds East 771.30 feet to the point of beginning. According to a survey by James G. Copp, Tennessee Registered Land Surveyor No. 1096, whose address is 6117 Dayton Boulevard, Hixson, Tennessee 37343, said drawing bearing date of May 22, 2001.

REFERENCE for prior title is made to deed of record in Book 5887, Page 698, in said Register's Office.

SUBJECT to 10 foot drainage appurtenant to Heritage Green Subdivision as shown by plat of record in Plat Book 58, Page 109, said Register's Office.

SUBJECT to any part of community lot B appurtenant to Heritage Green Subdivision, which may be within the bounds of the herein described property.

SUBJECT to application for agricultural use of record in Book 3594, Page 303, said Register's Office.

SUBJECT to easement to City of Chattanooga (Electric Power Board) for transmission line along West boundary of property, as shown on a survey by James G. Copp, Tennessee Registered Land Surveyor, dated May 22, 2001.

SUBJECT to governmental zoning and subdivision ordinances or regulations in effect thereon.

SUBJECT to easement to City of Chattanooga (Electric Power Board) dated October 28, 2004, and of record in Book 7320, Page 732, in said Register's Office, said easement superceding the easement of record in Book 7312, Page 908.

SUBJECT to Blanket Deed of Easement and Right-of-Way to Tennessee-American Water Company dated March 5, 2004, and appearing of record in Book 7073, Page 155, in said Register's Office.

SUBJECT to easements and restrictions as shown on plat appearing of record in Plat Book 77, Page 5, in said Register's Office.

SUBJECT to 50 foot building setback along the east line of the above described property.

SUBJECT to ingress and egress easement in favor of the Gardens of Heritage Green from an street located on the above described property to the community lot for said borders at Heritage Green.

SUBJECT to ingress and egress easement from the end of the private street to property now or formerly owned by the Rhodes family along the southerly portion of the above described property.

2004 taxes are to be prorated between grantor and grantee.