

This instrument prepared by:
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Record Book
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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
POPLAR GROVE TOWNHOMES, A HORIZONTAL PROPERTY REGIME
WITH PRIVATE ELEMENTS**

THIS DECLARATION, made and entered into by CRAIGHEAD DEVELOPMENT, LLC hereinafter referred to as the "Developer".

WITNESSETH:

WHEREAS, the Developer is the owner of certain real property located in the County of Rutherford, State of Tennessee, and described on Exhibit "A" attached hereto (the "Parcel"); and

WHEREAS, the Developer intends to and does hereby submit the above-described Parcel of real estate together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any way pertaining thereto (the "Property") to the provisions of the Tennessee Horizontal Property Act, Tenn. Code Ann. § 67-27-101 et seq., for the express purpose of establishing thereon a horizontal property regime with private elements to be known as Poplar Grove Townhomes, and

WHEREAS, the Developer further desires to establish said horizontal property regime for its own benefit and for the mutual benefit of all future owners or occupants of the Property or any part thereof, and intends that all future owners, occupants, mortgagees, and any other persons hereinafter acquiring any interest in the Property, shall hold such interest subject to certain rights, easements and privileges in, over and upon the 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 Property, and are established for the purpose of enhancing the value, desirability and attractiveness of the Property.

NOW, THEREFORE, the Developer declares as follows:

1. **Definitions.** As used herein, unless the context otherwise requires:

(a) "Act" means the Horizontal Property Act of the State of Tennessee, Tenn. Code Ann., Sections 66-27-101, et seq.

(b) "Association" means Poplar Grove Townhouse Corporation, a

Tennessee not-for-profit corporation.

(c) "Board" means the Board of Directors of the Poplar Grove Townhouse Corporation, a Tennessee not-for-profit corporation.

(d) "Building" or "Buildings" means the buildings located on the Parcel and forming part of the Property and containing the Units. The "Building" or "Buildings" are and shall be delineated on the Plat. Upon annexation of additional phases into the provisions hereof, Building or Buildings shall also mean the buildings located upon the additional phase or phases so annexed.

(e) "Bylaws" means the Bylaws of the Poplar Grove Townhouse Corporation attached hereto as Exhibit "B" and made a part hereof, as amended from time to time. For purposes of the Act, all provisions contained in this Declaration dealing with the administration and maintenance of the Property shall be deemed to be a part of the Bylaws.

(f) "Common Elements" means all real and personal property within the Property other than the Units (which include the Private Elements within the Units), which are now or hereafter owned by the Association. The Common Elements are designated on the Plat and shall be held by the Association for the common use and enjoyment of the Unit Owners. The Common Elements shall include, but shall not be limited to lawns (other than those within Private Elements), streets, roadways, bridges, culverts, parking areas, drainage structures and facilities, ponds, waterways, fences, sidewalks, curbs, gutters, signs, lights, utilities and other improvements. Common Elements in the first phase, and all subsequent phases added to the provisions of this Declaration, shall be transferred to the Association. "Common Elements as used herein shall also mean "General Common Elements" as set forth in the Act.

(g) "Declaration" means this instrument, as amended from time to time.

(h) "Developer" means Craighead Development, LLC, its successors and assigns, provided such successors or assigns are designated in writing by Developer as a successor or assign of the rights of Developer set forth herein.

(i) "Limited Common Elements" means any Common Elements contiguous to and serving a single Unit or a certain number of Units to the exclusion of other Units, as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful Occupants of such Unit or Units either in this Declaration, on the Plat, or by later decision of all of the Unit Owners.

(j) "Majority" or "majority of the Unit Owners" means the owners of more than fifty percent (50%) of the voting rights of the Unit Owners.

(k) "Occupant" means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

(l) "Parcel" means the parcel or tract of real estate described on Exhibit "A" attached to this Declaration. Upon annexation of additional phases into the provisions hereof, Parcel shall also mean the additional property so annexed.

(m) "Person" means a natural individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

(n) "Plat" means the plat or 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 including but not limited to the area of the Private Elements upon which the Unit is located, said Plat for the first phase of the Poplar Grove Townhomes being attached hereto as Exhibit "C". Upon annexation of additional phases into the provisions hereof, Plat shall also mean the plat for the additional phase or phases so annexed.

(o) "Private Elements" means the lot area upon which each Unit is located and the improvements now or hereafter located thereon. Exclusive ownership in fee simple and use of the Private Elements for each Unit is reserved to such Unit. The area of the Private Elements for each Unit is as shown on the Plat. Lots, as referenced on the Plat, shall be deemed to refer to the Private Elements. The Private Element applicable to a Unit shall include the front driveway and concrete walkway serving such Unit, as well as the open space extending twelve feet beyond the rear of the Unit's structure, and the patio located therein, with the sides of such rear open space being parallel to the sides of the Unit.

(p) "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 all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act. Upon annexation of additional phases into the provisions hereof, Property shall also mean and include the additional area so annexed.

(q) "Record" or "Recording" refers to the record or recording in the office of the Register of Deeds of Rutherford County, Tennessee.

(r) "Unit" means a portion of the Property as shown and designated in the Plat for separate ownership and shall include the Private Elements and the residence and improvements now and hereafter located thereon. The Units are identified by number on the Plat and may be held and conveyed by reference to such number. Conveyance of a Unit shall automatically convey the undivided membership of each Unit Owner in the Association. Each Unit is numbered as shown on the Plat. Any Unit may be jointly or commonly owned in any estate recognized under applicable law. The term "Unit" as used in this Declaration shall have the same meaning as the term "Apartment" as used in the Act.

(s) "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 Developer shall be deemed a Unit Owner so long as the Developer is the title holder of any Unit.

2. Submission of Property to the Act. The Developer, by recording this Declaration, does hereby submit and subject the Parcel and the Property to the provisions of the Act and hereby establishes a horizontal property regime with private elements as authorized and described in the Act and to be hereafter known as Poplar Grove Townhomes.

3. Plat. The Plat sets forth the numbers, areas, locations, and other data as required by the Act.

4. Units. The legal description of each Unit shall consist of the identifying number of such Unit as shown on the Plat. Every deed, lease, mortgage, 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, 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.

5. (a) Association of Unit Owners and Administration and Operation of the Property. There has been or will be formed an Association having the name Poplar Grove Townhouse Corporation, a Tennessee not-for-profit corporation, which 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 Declaration and Bylaws. The Unit Owners shall each be members of the Association, with each Unit holding an undivided membership interest in the Association which shall be appurtenant to such Unit, each such membership interest appurtenant to a Unit being in an equal share, subject to the provisions concerning voting hereinafter set forth. The Bylaws for the Association shall be the Bylaws attached to this Declaration as Exhibit "B" and made a part hereof. The Board of Directors of the Association shall be elected and shall serve in accordance with the provisions of the Bylaws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the use and benefit of Unit Owners in accordance with the provisions of the Declaration and Bylaws. Each Unit Owner shall be a member of the Association so long as such Owner is a Unit Owner. A Unit Owner's membership shall automatically terminate when such Owner ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall automatically succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be divided among the respective Unit Owners with one (1) vote granted to each Unit (except that the Developer shall have three votes per Unit as provided in Section 5(b) below).

(b) **Voting Membership.**

Class A. Class A members shall be all Unit Owners, with the exception of the Developer, and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

Class B. The Class B member shall be the Developer and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) when one hundred percent (100%) of the Units in all phases of Poplar Grove Townhomes which are contemplated to be platted have been sold by Developer; or

(ii) June 1, 2008.

(c) **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, subject to the provisions of subparagraph (d) below. The Board shall require that such Managing Agent have fidelity bond coverage on its employees handling Association funds. The cost of such services shall be a common expense, as defined in paragraph 10 below. 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 mortgagees of Units.

(d) **Initial Management Contract.** The First Board, appointed as provided herein, shall ratify and approve the Management Agreement between the Developer, on behalf of the Association, and a management corporation, to act as Managing Agent for the Property, for a term as approved by said First Board, but not to exceed one (1) year.

(e) **Use by Developer.** During the period of sale by the Developer (and/or any builder(s)) of any Units, the Developer (and/or any builder(s)), and their 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 as may be required for purposes of sale of the Units. While the Developer (and/or any builder(s)) owns any of the Units and until each Unit sold by it is occupied by the purchasers, the Developer (and/or any builder(s)) 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.

(f) **Non-Liability of the Directors, Board, Officers and Developer.** Neither the directors, Board, officers of the association, nor the Developer shall be personally liable to the Uni

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Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors, Board, officers, or Developer, 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 Developer, and their respective heirs, executors, administrators, successors and assigns in accordance with the Charter of the Association and Bylaws.

(g) Interest of Association in Common Elements. Ownership of the Common Elements shall be vested in the Association.

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 Declaration or Bylaws, the determination thereof by the Board shall be final and binding on each and all such Unit Owners.

7. Ownership of Interests in the Association. Subject to the provisions concerning voting rights hereinabove contained, each Unit shall be allocated an equal percentage ownership in the Association. The percentages of ownership interests shall remain constant unless hereafter changed by recorded amendment to this Declaration consented to in writing by the Unit Owners, in accordance with the requirements hereinafter contained. Said ownership interest shall be an undivided interest, and the undivided membership interests in the Association shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in the Association corresponding to said Unit. The undivided percentage of ownership in the Association corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit.

8. Use of the Common Elements. Except as hereinafter set forth, each Unit Owner shall have the right to use the Common Elements (except the Private Elements) 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 to each Unit Owner, and such Owner's agents, servants, tenants, family members, customers, invitees and licensees. However, each Unit Owner shall have the right to the exclusive use and possession of the Private Elements attributable to the Unit. Such rights to use the Common Elements, shall be subject to and governed by the provisions of the Act, Declaration, Bylaws and any rules and regulations established by the Association. In addition, the Association shall have the authority to lease, grant concessions or grant easements with respect to parts of the Common Elements, subject to the provisions of the Declaration and Bylaws. All income derived by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

9. Storage Areas and Parking Spaces. No storage units or areas shall be permitted upon the Property outside of a Unit, excepting only those storage areas or buildings controlled by

the Association for the exclusive use by the Association. Parking spaces within the Parcel, even though located on Private Elements, shall be used by such Unit Owners in such manner and subject to such rules and regulations as the Board may prescribe.

10. (a) Common Expenses. Each Unit Owner shall pay an equal share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance with the Declaration and Bylaws (which expenses are herein sometimes referred to as "common expenses"), including, but not limited to, the maintenance and repair thereof and any and all replacements and additions thereto. Payment of common expenses, including any prepayment thereof required by any contract for a sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. No Unit Owner shall be exempt from payment of such Unit Owner's proportionate share of the common expenses by waiver or non-use of enjoyment of the Common Elements, or by abandonment of such Owner's Unit. If any Unit Owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof, together with interest thereon at the rate of ten percent (10%) per annum, after said common expenses become due and payable, shall constitute a lien on the interest of such Unit Owner in the Unit as provided in the Act. Each assessment for common expenses against a Unit shall also be the personal obligation of the Unit Owner at the time the assessment is due. A successor in title to a Unit shall not be personally obligated to pay any unpaid assessments for common expenses which have been levied against a Unit unless such successor in title expressly assumes the payment of the same, provided, however, any lien encumbering a Unit as above described shall not be affected by transfer of a Unit.

The Developer shall not be required to expend from its own funds any sums of money for maintenance, improvements, or any other expenses of the administration of the Common Elements, and no Unit owned by the Developer shall be assessed for common expenses, or otherwise, until such time as construction of such Unit is completed and occupied by a tenant of Developer, or is sold by the Developer. This paragraph of Section 10, subsection (a), may not be modified or amended without the unanimous written consent of all Unit Owners. Notwithstanding the provisions of this paragraph or any amendment hereto, the person or entity (each a "Builder" and collectively the "Builders") undertaking to construct or erect any Unit or Building on the Property shall be exclusively responsible for the Developer's portion of any sums of money for maintenance, improvements, or any other expenses of the administration of the Common Elements related or proportionate to such Units or Buildings so constructed (the "Sums"), and such Builders shall indemnify and hold harmless the Developer from and against any claim for contribution to or payment of the Sums, it being expressly understood and agreed that the Developer is not to be held responsible for any failure of the Builder(s) to satisfy any financial requirements they may have related to the Sums.

The Units shall be subject to Assessments, both general and special, as provided by the Bylaws of the Association which are attached to this Declaration.

(b) Enforcement. In the event any Unit Owner fails to maintain such Owner's Unit, including the Private Elements attributable to such Unit, or in the event any Unit Owner fails to pay

such Owner's proportionate share of any common expense when such is due, then in any such event the Board may after ten (10) days' notice to the defaulting Unit Owner, perform such maintenance, advance and pay such sums, or do any other reasonable act necessary to cure such default. The Association shall have a lien against the Unit of the defaulting Unit Owner securing payment of the sums expended or advanced, and shall be entitled to enforce such lien by filing suit in a court of competent jurisdiction. In the event the Association is successful in such suit, it shall be entitled to recover reasonable attorney fees and costs incurred in such suit and enforcement of its rights.

(c) Mortgage and Deed of Trust Protection. The lien for common expenses payable by a Unit Owner shall be subordinate to the lien of a recorded mortgage or deed of trust on the interest of such Unit Owner, except for the amount of the proportionate share of common expenses which become due and payable from and after the date on which the mortgagee or beneficiary thereunder either takes possession of the Unit encumbered thereby, accepts a conveyance of any interest therein (other than as security) or forecloses its mortgage or deed of trust. This subparagraph (c) shall not be amended, changed, modified or rescinded without the prior written consent of all mortgagees and deed of trust beneficiaries of record.

(d) Special Assessments. In addition to the annual assessments for common expenses authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Unit Owners.

(e) Exemptions. Notwithstanding any provision to the contrary in this Declaration or the ByLaws attached hereto, and except for the contribution required in this paragraph, the Developer and any Successor Developer shall be exempt from the payment of assessments for any Units owned by the Developer, and any Successor Developer until such time as the weighted voting rights provided by Section 5(b) of the Declaration no longer provide an automatic majority to the Developer or any Successor Developer. During the time that the Developer and any Successor Developer is exempt from the payment of assessments, the Developer, and any Successor Developer shall fund and pay any shortfall between the annual budget for the Association and the actual costs of operating and maintaining the Common Area and administering the Association. In order to secure payment of any such shortfall, there shall arise a continuing lien and charge in favor of the Association against all of the property owned by the Developer within the Property, the amount of which shall include interest at the maximum effective rate allowed by the law, costs, and reasonable attorney's fees to the extent permissible by law. Said obligation to fund shortfalls, together with such interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Developer or Successor Developer at the time the shortfall occurred. The lien shall survive any transfer of title and the property shall remain subject to levy and execution. The Developer's, and any Successor Developer's, obligation to fund any such shortfall shall terminate at such time as the Developer's and any Successor Developer's, weighted voting rights no longer provide an automatic majority to the Developer or any Successor Developer.

11. Mortgages and Deeds of Trust. Each Unit Owner shall have the right, subject to the provisions herein, to make separate mortgages and deeds of trust for such Unit Owners' respective Unit, including such Unit Owner's respective ownership interest in the Association. No Unit Owner shall have the right or authority to make or create, or cause to be made or created, from the date hereof, any mortgage, deed of trust or other lien on or affecting the Property or any part thereof, except only to the extent of such Owner's Unit and the interest in the Association corresponding thereto.

12. Separate Real Estate Taxes. Real estate taxes shall be separately taxed to each Unit Owner for such Owner's Unit and including the corresponding percentage of ownership in the Association, as provided in the Act. In the event that such taxes for any year are not separately taxed to each Unit Owner, but rather are taxed on the Property as a whole, then each Unit Owner shall pay such Owner's proportionate share thereof in accordance with such Owner's respective percentage of ownership interest in the Association, and, in said event, such taxes shall be a common expense.

13. Insurance. The Board shall have the authority to and shall obtain insurance for the Property, including the Units and Private Elements, 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 Units, and against such other hazards and for such amounts as the Board may deem advisable. Such insurance shall, if possible, include 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 Association, as the trustee for each of the Unit Owners in direct ratio to said Unit Owner's respective percentage of ownership in the Association, as set forth in the Declaration, and for the holders of mortgages and deeds of trust on his 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. However, at the option of the Board, and upon written notice to all Unit Owners, premiums for such insurance shall be separately billed to each Unit Owner for such Owner's Unit and such Owner's corresponding percentage of ownership in the Association.

In the event of damage to or destruction of any Buildings or Common Elements as a result of fire or other casualty covered by insurance proceeds (unless more than two-thirds (2/3) of the Buildings require reconstruction) the Board shall, in its discretion, with the prior written approval of a majority of the mortgagees of the Units affected, determine and, without intervention of any Unit Owner, arrange for the prompt repair and restoration of the damaged portions of all Units, Buildings and Common Elements substantially in accordance with the original plans and specifications therefor. Where the insurance indemnity is insufficient to cover the cost of such repairs and restoration, the deficit shall be paid by all Unit Owners directly affected by the damage, in proportion to each Unit's percentage of ownership in the Association. The Board shall not be responsible for the repair, replacement or restoration of any wall, ceiling or floor decorations or covering, or furniture,

furnishings, fixtures, appliances or equipment installed in the Unit by a Unit Owner or Occupant unless insurance therefor is specifically provided for in the insurance policy obtained by the Board.

Reconstruction shall not be compulsory where the whole or more than two-thirds (2/3) of all the Buildings are destroyed or damaged by fire or other casualty, as determined by the Board. In such case, and unless otherwise unanimously agreed upon by the Unit Owners and their mortgagees, the insurance proceeds shall be delivered to the Unit Owners or their mortgagees, as their interests may appear, in proportion to the respective interests of the Unit Owners, as computed by dividing the square footage of each Unit by the total square footage of all Units taken together; and the Board, as soon as reasonably possible and as agent for the Unit Owners, shall sell the Property, in its then condition, free from the effect of this Declaration, which shall terminate upon such sale, on terms satisfactory to the Board, and the net proceeds of such sale and the net proceeds of all insurance policies shall thereupon be distributed to the Unit Owners or their mortgagees, as their interests may appear, in proportion to the percentage interest of each Unit Owner in the Association. If the Board fails to consummate a sale pursuant to this paragraph within twenty-four (24) months after the destruction or damage occurs, then the Managing Agent, or the Board, shall, or if they do not, any Unit Owner or Mortgagee may, record a sworn Declaration setting forth such decision and reciting that under the provisions of this Declaration the prohibition against judicial partition provided for in this Declaration has terminated and that judicial partition of the Property may be obtained pursuant to the laws of the State of Tennessee. Upon final judgment of a court of competent jurisdiction decreeing such partition, this Declaration shall terminate.

The Board shall also have authority to and shall obtain comprehensive public liability insurance, in such amounts as it deems desirable, and worker's compensation insurance and other liability insurance as it deems desirable, insuring each Unit Owner, mortgagees of record, if any, the Association, its officers, directors, Board and employees, the Developer, and the Managing Agent, if any, from liability in connection with the Common Elements. The premiums for such insurance shall be a common expense. However, at the option of the Board, and upon written notice to all Unit Owners, premiums for such insurance shall be separately billed to each Unit Owner for such Owner's corresponding percentage of ownership in the Association. The Board shall retain in safekeeping any such public liability policy for six (6) years after the expiration date of the policy.

The Board shall also have authority to and may obtain such insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Property and each member of the Board and officers of the Association, and members of any committee appointed pursuant to the Bylaws of the Association from liability arising from the fact that said person is or was director or officer of the Association, or a member of such a committee.

Each Unit Owner shall be responsible for obtaining his own insurance on the contents of such Owner's Unit, as well as additions and improvements thereto, decorations, furnishings and personal property therein, and personal property stored elsewhere on the Property. In addition, in the event a Unit Owner desires to insure against such Owner's personal liability and loss or damage by fire or other hazards above and beyond the extent that such Owner's 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, said Unit Owner may, at such Owner's option and expense, obtain additional insurance.

14. Maintenance, Repairs and Replacements.

(a) Obligations of Unit Owners. Each Unit Owner, at such Owner's expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within the interior of such Owner's Unit, including plumbing, pipes, wiring, appliances, and structural components of the Unit. In addition each Unit Owner shall be responsible for all exterior glass, windows, including storm windows, screens, and doors, including storm doors.

(b) Obligations of Association. The Association shall be responsible for maintenance of, repairs to and replacements within the Common Elements, including landscaping and yard maintenance, and on the Units and Private Elements the Association shall be responsible for exterior landscaping, walkways, porches, decks and balconies, painting and non-structural maintenance and repair of roofs, gutters, down-spouts, trim, caulking and other exterior repairs of a non-structural nature, provided that such exterior maintenance responsibilities shall not include glass, windows, including storm windows, screens and doors, including storm doors, which shall be the responsibility of the Unit Owner. Other items of maintenance, repair and replacement in the Units shall be the responsibility of the Unit Owner. The cost of maintenance of, repairs to and replacements which are the responsibility of the Association shall be part of the common expenses, subject to the Bylaws, rules and regulations of the Association.

(c) Loss Attributable to Unit Owner. Notwithstanding the foregoing, if, due to the act or neglect of a Unit Owner, or the agent, servant, tenant, family member, invitee, licensee or household pet thereof, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repair or replacement are required which would otherwise be a common expense, then such Unit Owner shall pay for such damage or such maintenance, repair and replacements, as may be determined by the Association, to the extent not covered by the Association's insurance or sufficient proceeds are not collected from the insurance carrier.

The authorized representative of the Association, Board or of the Managing Agent with approval of the Board shall be entitled to reasonable access to the individual Units and Private Elements as may be required in connection with the preservation of any individual Unit or Private Elements in the event of an emergency, or in connection with maintenance of, repairs or replacements within the Common Elements, Private Elements or any equipment, facilities or fixtures affecting or serving the other Units, Common Elements or Private Elements or to make any alteration required by any governmental authority.

(d) Party Walls. Each wall built as a part of the original construction of a structure upon the Private Elements and placed on the dividing line between two Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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The following provisions shall apply to all party walls constructed in the Property: (i) 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 proportion to such use. (ii) If a party wall is destroyed or damaged by fire or other casualty, any Unit Owner who has used the wall may restore it. If other Unit Owners make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; subject, however, to the right of any Unit Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions. (iii) The Unit Owner may construct or reconstruct a party wall subject to and within the limitations of architectural control and other limitations of this Declaration with the right to go upon the adjoining Lot to the extent reasonably necessary to perform the construction. The construction shall be done expeditiously. Upon completion of the construction, the Unit Owner shall restore, as is reasonably practicable, the adjoining Unit to as near the same condition which prevailed on or before the commencement of the construction. (iv) The right of any Unit Owner to contribution from any other Unit Owner under this Section shall be appurtenant to the land and shall pass to the Unit Owner's successors in title. (v) If any Unit Owner desires to sell his Unit, he may, in order to assure a prospective purchaser that no adjoining Unit Owner(s) has a right of contribution as provided in this Article, request that the adjoining Unit Owner(s) provide a certification that no right of contribution exists. It shall be the duty of each adjoining Unit Owner to make a certification as to whether there is any pending claim of contribution immediately upon request and without charge.

15. Architectural Control, Alterations, Additions or Improvements.

(a) Architectural Control. No structure may be erected, placed or altered on any Private Elements, and no building permit may be obtained, until the construction plans and building specifications and a plan showing (i) the location of improvements on the Private Elements; (ii) the grade elevation (including rear, front and side elevations); (iii) the type of exterior material and roof material (including delivery of samples thereof); (iv) the color of paint or stain to be applied to any exterior surfaces and the color of the roof material (including delivery of samples thereof); and (v) the location and size of the driveway (which shall be broom finish concrete, unless otherwise approved by Developer), shall have been approved in writing by the Architectural Control Committee which shall be appointed (a) by the Developer until such time as the Developer has sold all of its Units and thereafter (b) designated by the Board.

(b) Alterations, Additions or Improvements. Except as provided specifically herein, no alteration of any Common Elements or Private Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Board after review and approval by the Architectural Control Committee. The Board may authorize and charge as common expenses alterations, additions and improvements of the Common Elements and Private Elements as provided in the Bylaws. The expense of such charges shall be paid out of the reserves established in the Association's annual budget which shall be funded by a portion of the annual assessments applicable to each Unit. Any Unit Owner may make non-structural alterations, additions or improvements within the Unit of the Unit Owner without the prior written approval of the Board, but such Unit Owner shall be responsible for any damage to other Units, the Common Elements, the Private Elements, the Property, or any part thereof, resulting from such alterations,

additions or improvements.

16. Decorating. Each Unit Owner, at such Owner's expense, shall furnish and be responsible for all decorating within such Owner's Unit and Private Elements serving such Unit.

17. Encroachments and Easements. If any portions of the Common Elements shall actually encroach upon any Unit or Private Elements, or if any Unit or Private Elements shall actually encroach upon any portions of the Common Elements, or if any Unit or Private Elements shall actually encroach upon another Unit or Private Elements, as the Common Elements, Units and Private Elements are shown by the Plat, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved, to the extent of such encroachments, so long as the same shall exist.

The Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the horizontal property regime.

18. Association's Right to Purchase at a Foreclosure Sale. The Board shall have the power and authority to bid and purchase, for and on behalf of any Unit, or interest therein, at a sale pursuant to a deed of trust or mortgage foreclosure, a foreclosure of the lien for common expenses under the Act, or an order or direction of a court, or at any other involuntary sale, upon the consent or approval of Unit Owners owning not less than three-fifths (3/5) of the total votes of the Unit Owners. Such consent shall set forth a maximum price which the Board or its duly authorized agent may bid and pay for said Unit.

The Board shall have authority to make such mortgage arrangements and special assessments proportionately among the respective Unit Owners, and other such financing arrangements as the Board may deem desirable, in order to close and consummate the purchase or lease of a Unit, or interest therein, by the Association. However, no such financing arrangement may be secured by an encumbrance on any interest in the Property other than the Unit, or interest therein, to be purchased or leased, and the percentage interest in the Association appurtenant thereto.

19. Use and Occupancy Restrictions. Subject to the provisions of the Bylaws, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed and as allowed by municipal zoning laws. Each Unit shall be used as a residence or such other use permitted by this Declaration, and for no other purposes except that professional and quasi-professional people may use their residence (not in violation of municipal zoning laws) as an ancillary or secondary facility to an office established elsewhere. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from: (a) maintaining a personal professional library; (b) keeping personal business or professional records or accounts; or (c) handling personal business or professional telephone calls or correspondence. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions or municipal zoning law.

No Unit or Common Elements may be used in violation of the restrictions and provisions contained in the Bylaws. No building or other structure shall be erected, altered or permitted to remain as part of any Unit except in conformance with this Declaration.

The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, customers, invitees and licensees for access, ingress to and egress from the respective Units and for such other purposes incidental to use of the Units; provided, however, that any areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession or easement, presently in existence or entered into by the Board at some future time, affecting any part or all of said Common Elements.

In addition to the above, the following restrictions shall apply:

(a) Approval of Plans.

No construction, reconstruction, remodeling, alteration, or addition of or to any structure, building, fence, wall, drive, or improvement of any nature shall be constructed without obtaining prior written approval of the Architectural Control Committee established as provided in Section 15(a) as to the location, plans, and specifications therefor. As a prerequisite to consideration for approval, and prior to the commencement of the contemplated work, two (2) complete sets of building plans and specifications shall be submitted. The Architectural Control Committee shall be the sole arbiter of such plans and may withhold its approval for any reasons, including purely aesthetic reasons. It is expressly acknowledged that construction undertaken by (i) the Developer and (ii) any builder who purchases Unit(s) from the Developer shall be conclusively deemed to comply with the foregoing, it being declared that construction of Unit(s) by (i) the Developer and (ii) any builder who purchases Unit(s) from the Developer shall be exempt from Architectural Control Committee review and from any limitations on construction existing under this Declaration or the Association's Bylaws. Upon giving approval, construction shall be started and prosecuted to completion promptly and in strict conformity with such plans.

At such time as Developer divests itself of all Units within the development, the right of approval of plans for further construction, reconstruction, remodeling, alterations, and additions shall thereafter rest exclusively in the Association and in its Board of Directors, which Board shall thereafter appoint the membership of the Architectural Control Committee.

Developer, the Association, the Architectural Control Committee and the individual member thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. In the event that the Architectural Control Committee fails to indicate its approval or disapproval within thirty (30) days after the receipt of the required documents, approval will not be required and the related covenants set out herein shall be deemed to have been fully satisfied. Approval or disapproval by the Architectural Control Committee shall not be deemed to constitute any warranty or representation by it including, without limitation, an

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warranty or representation as to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations. Anything contained in this paragraph, or elsewhere in this Declaration to the contrary notwithstanding, Developer and the Association are hereby authorized and empowered, at their sole and absolute discretion, to make and permit reasonable modifications or deviations from any of the requirements of this Declaration relating to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Unit and of the size and location of such building or improvement when, in their sole and final judgment, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Properties and the improvements as a whole; provided, however, such modifications and deviations must remain within all applicable ordinances and regulations established by the City of Smyrna, Tennessee and Rutherford County, Tennessee.

The Architectural Control Committee may require the submission to it of such documents and items, including as examples, but without limitation, written requests for and description of the variances requested, plans, specifications, plot plans and samples of material(s), as either of them shall deem appropriate, in connection with its consideration of a request for a variance. If the Architectural Control Committee shall approve such request for a variance, it shall evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the Owner of the Unit(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing its decision to permit the variance, describing (when applicable) the conditions on which the variance has been approved (including as examples, but without limitation, the type of alternate materials to be permitted, and alternate fence height approved or specifying the location, plans and specifications applicable to an approved outbuilding), and signed by the Architectural Control Committee. Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (i) written notice of disapproval from the Architectural Control Committee or (ii) failure by the Architectural Control Committee to respond to the request for variance. In the event the Architectural Control Committee or any successor to the authority thereof shall not then be functioning, no variances from the covenants herein contained shall be permitted, it being the intention of Developer that no variances be available except at its discretion or that of the Architectural Control Committee. The Architectural Control Committee shall not have the authority to approve any variance except as expressly provided in this Declaration.

(b) Structural Compliance. All structures shall be built in substantial compliance with the plans and specifications therefor, approved by Developer or the Association as provided in this section 19.

(c) Improvement and Setback Restrictions. No building or structure, or any part thereof, shall be located on any Unit so that the improvements exceed the boundaries of the Unit. No encroachment upon any utility easement reserved on the Plat shall be authorized or permitted.

(d) Re-subdivision or re-combination of Units. No Unit shall be re-subdivided or re-combined, nor shall any building be erected or placed on any such re-subdivided Unit, unless such

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re-subdivision is approved by the Association, as well as any governmental authority having jurisdiction. Developer, however, shall have the right, but not the obligation, to re-subdivide into Units, by recorded plat or in any other lawful manner, all or any part of the Properties contained within the outer boundaries of the Plat, and such Units, as re-platted, shall be subject to this Declaration as if such Units were originally included herein. Any such re-plat must comply with pertinent re-platting ordinances, statutes, regulations and requirements.

(e) Walls, Fences and Hedges. All walls, fences or hedges shall be erected or maintained as approved and directed by the Architectural Control Committee.

(f) Roofing Material. The roof of any building (including any garage) shall be constructed or covered with roofing material as shall be permitted in the sole discretion of the Architectural Control Committee.

(g) Attached Garage. Each Unit shall contain an attached garage for a minimum of two cars. The garage may only be used as a storage area for the Owner's automobiles and other vehicles and personal property. All boats, motorcycles, motor bikes, three wheelers, All Terrain Vehicles, recreational vehicles, campers and other motorized vehicles must be stored in the garage or an area designated by the Architectural Control Committee.

(h) Exterior Finish. Units shall be constructed with an exterior finish as designated by the Architectural Control Committee. No Unit shall be authorized to vary its exterior from that approved by the Architectural Control Committee.

(i) Common Mailbox Style. The Association reserves the right to designate the style and material of all mailboxes.

(j) Storage Tanks and Refuse Disposal. No exposed above-ground tanks or receptacles shall be permitted for the storage of fuel, water, or any other substance, except for refuse produced through normal daily living and of a nature which is satisfactory for pick-up by the Department of Public Works or its equivalent. Incinerators for garbage, trash, or other refuse shall not be used or permitted to be erected or place on or adjacent to any Unit. All equipment, coolers, and garbage cans shall be concealed from the view of neighboring lots, roads, streets, and open areas.

(k) Clothes Lines. Outside clothes lines shall not be permitted.

(l) Signs and Advertisements. No sign, advertisement, billboard or advertising structure of any kind shall be erected upon or displayed or otherwise exposed to view on any Unit or any improvement thereon without the prior written consent of the Architectural Control Committee; provided that this requirement shall not preclude the installation by Developer and/or any builder of signs identifying the entire residential development and provided further that this requirement shall not preclude the placement by Owners of "For Sale" signs in the front of individual residences of such size, character, and number as shall from time to time be approved by the Architectural Control Committee. The Architectural Control Committee shall have the right to remove any such

unapproved sign, advertisement, billboard or structure that is placed on said Units, and in doing so shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

(m) Use of Temporary Structures. No structure of a temporary character, mobile home, camper, trailer, basement, tent, shack, garage, barn or other outbuilding shall be erected or moved onto any Unit. No structure of any kind except a dwelling house may be occupied as a residence, and the outside of any building so occupied must be completed before occupancy, including landscaping. Temporary structures may be used as building or sales offices and for related purposes during the construction period by the Developer, any builder, or their assigns.

(n) Storage of Automobiles, Boats, Trailers and Other Vehicles. All inoperative vehicles and recreational vehicles (including, but not limited to, campers, trailers, boats, boat trailers and travel trailers) must be stored in the garage. No tractor trailers, buses, or other large commercial vehicles may be parked on driveways or in streets within the Properties. The foregoing shall not apply to construction vehicles of the Developer or any builder. Overnight parking of any vehicle, trailer or other wheeled instrument or equipment on any street within the Properties shall not be permitted.

(o) Outside Lighting. Outside lights at eaves and door entrances shall be permitted, but no exterior flashing or high-intensity lights, floodlights, or spotlights on the exterior of any building shall be permitted, except with the prior written approval of the Architectural Control Committee.

(p) Maximum Height of Antennae. Unless approved by Developer, no electronic antenna or device of any type other than an antenna for receiving normal television signals shall be erected, constructed, placed or permitted to remain on any Lot, house or building. Television antennas must be located to the rear of the roof ridge line, gable or center line of the Unit. No antennae shall be permitted to extend more than ten (10) feet above the roof of the Unit, or shall be erected on a wooden pole. Provided, however, that Owner shall be entitled to install and erect digital satellite equipment, including satellite dishes, provided that the diameter of any such dish shall not exceed twenty (20) inches and provided that plans as to the location and installation for such dish are submitted to the Architectural Control Committee or architectural committee for approval and comments in accordance with the provisions of set forth above.

(q) HVAC Units. All central air conditioning system units must be used, erected, placed or maintained on the side or to the rear of the Unit. No window or wall type air conditioning units shall be permitted in any Unit.

(r) Recreational Equipment. All playground and recreational equipment must be used, erected, placed or maintained to the rear of all Units.

(s) Oil and Mining Operations. No oil drilling, oil development operations, oil refining quarrying or mining operations shall be permitted on any Unit, nor shall oil wells, tanks, tunnels mineral excavations or shafts be permitted upon or in any Unit. No derrick or other structur

designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Unit.

(t) Maintenance. All Units, together with the exterior of all improvements located thereon, shall be maintained in a neat and attractive condition by their respective Owners or Occupants. Such maintenance shall include, but not be limited to, painting, repairing, replacing, and caring for roofs, gutters, downspouts, building surfaces, patios, walkways, driveways, and other exterior improvements. The Owner or Occupant of each Unit shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner and all trees and shrubbery pruned and cut. No Unit shall be used for storage of material and equipment, except for normal residential requirements or incident to construction of improvements thereon as herein permitted. The accumulation of garbage, trash or rubbish of any kind and the burning (except as permitted by law) of any such materials is prohibited. In the event of default on the part of the Owner or Occupant of any Unit in observing the above requirements or any of them, such default continuing after ten (10) days' written notice thereof, the Association may, subject to approval of its Board of Directors, enter upon said Unit, repair, maintain and restore the same, cut or prune or cause to be cut or pruned, such weeds, grass, trees and shrubbery and remove or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions and to place said Unit in a neat, attractive, healthful and sanitary condition. In so doing, the Association shall not be subject to any liability for trespass or otherwise. All costs incurred in any such repair, maintenance, restoration, cutting, pruning or removal shall be charged against the Owner of such Unit as the personal obligation of such Owner and as a lien upon the Unit, enforceable and collectible in the same manner and to the same extent as a maintenance assessment. Any Occupant of such Unit shall be jointly and severally liable with the Owner for the payment of such costs.

(u) The Association shall contract with one (1) or more landscaping services to provide grass cutting, lawn maintenance, proper care for all trees, shrubbery and other landscaping, and other necessary maintenance services for the Common Areas, provision for which shall be made in the monthly or annual assessments.

(v) Use of Premises. Each Lot shown on the Plat shall be used only for private, single-family residential purposes and not otherwise. Notwithstanding the foregoing, Developer and any builder may maintain, as long as it owns the property in or upon such portion of the Properties as Developer or any builder may determine, such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units and signs, and Developer may use and permit builders (who are at the relevant time building and selling houses in the development) to use, residential structures, garages or accessory buildings for sales offices and display purposes, but all rights of Developer and of any builder acting with Developer's permission under this sentence, shall be operative and effective only during the construction and sales period within the area, and their provision may not be amended, altered or repaired without the prior consent of the Developer. It is expressly declared that Developer and any builder shall be permitted to construct, maintain and operate one or more model units.

(w) Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred

pastured, or maintained on any Lot, except household pets such as small dogs and cats which may be kept thereon in reasonable numbers as pets for the sole pleasure of the Owner or Occupant, but not for any commercial use or purpose.

(x) Nuisances and Unsightly Materials. No house or other structure on any Lot shall be used for any business or commercial purpose. Each Owner or Occupant shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance, or nuisance to others. No noxious, offensive, or illegal activity shall be carried on upon any Lot. No motorcycle, motorbike, motor scooter, or any other unlicensed motorized vehicle shall be permitted to be operated on or in the Common Areas. No Lot shall be used, in whole or in part, for the storage of rubbish of any character whatsoever; nor shall any substance, thing, or material be kept upon any Lot which will emit foul or noxious odors or which will cause any noise that will or might disturb the peace and quiet of the Owners or Occupants of surrounding Lots or property. The foregoing shall not be construed to prohibit the temporary deposits of trash and other debris for pick-up by garbage and trash removal service units.

(y) Hobbies and Activities. The pursuit of any inherently dangerous activity or hobby, including, without limitation, the assembly and disassembly of motor vehicles or other mechanical devices, the shooting of firearms, fireworks, or pyrotechnic devices of any type or size, and other such activities shall not be pursued or undertaken on any part of any Lot or upon the Common Areas without the consent of the Association.

(z) Governmental Restrictions. Each Owner shall observe all governmental building codes, health regulations, zoning restrictions, and other regulations applicable to his Unit. In the event of any conflict between any provision of any such governmental code, regulation, or restriction and any provisions of this Declaration, the more restrictive provision shall apply.

20. Remedies. In the event of any violation of the provisions of the Act, Declaration, Bylaws or rules and regulations of the Board or Association by any Unit Owner (either by the Unit Owner's own conduct or by the conduct of any other Occupant of such Owners Unit) the Association, or its successors or assigns, or the Board, or its agent, and any Unit Owner(s) shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, Bylaws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to sell the Unit through judicial process as provided hereinbefore, or for any combination of remedies, or for any other relief. All expenses of the Board in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of ten (10%) percent per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of such Owner's respective share of the common expenses, and the Board shall have a lien for all of the same, as well as for nonpayment of the Unit Owner's respective share

of the common expenses, upon the Unit and ownership interest in the Association of such defaulting Unit Owner and upon all of such Owner's additions and improvements thereto and upon all of such Owner's personal property in such Owners Unit or located elsewhere on the Property, provided, however, that such lien shall subordinate to the lien of a recorded mortgage or deed of trust on the interest of such Unit Owner, except for the amount of the proportionate share of said common expenses which become due and payable from and after the date on which the said mortgage or deed of trust owner or holder either takes possession of the Unit, accepts a conveyance of any interest therein (other than as a security) or files suit to foreclose its mortgage or deed of trust. In the event of any such default by any Unit Owner, the Board and the manager or Managing Agent, if so authorized by the Board, shall have the authority to correct such default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board. This paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of record of mortgages and deeds of trust against Units.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board the right, in addition to any other rights provided for in this Declaration; (a) to enter (either peaceably or forcibly without liability to such Unit Owner for such entry) upon the Unit, or any portion of the Property upon which, or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or (c) to take possession (either peaceably or forcibly without liability to such Unit Owner for such entry) of such Unit Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law.

In addition to the other remedies provided for herein, in the event of a default by a Unit Owner in the payment of such Unit Owner's respective share of the common expenses which default continues for a period of ninety (90) days, the Board shall have the power and authority to place such Unit Owner's name on a list of delinquent Unit Owners, which list may be posted at a place designated by the Board for notices.

21. Amendments.

(a) Amendments Annexing Additional Phases. The Developer may, but shall not be obligated to, incorporate additional area into additional phases of the horizontal property regime governed by this Declaration. The annexation of such additional phases shall be accomplished by the unilateral execution by Developer, and recording, of an amendment to this instrument setting forth the additional real property to be brought within the provisions of this Declaration and reciting that it shall be held and conveyed subject to the provisions hereof as an additional phase or phases of Poplar Grove Townhomes. Upon the addition of additional Units to the Poplar Grove Townhomes

horizontal property regime, then the percentage ownership in the Association of the Unit Owners shall be automatically adjusted so that each Unit Owner owns an equal undivided ownership interest in the Association.

(b) Other Amendments. Except as specifically stated elsewhere herein, and except for this Section 21, any provisions of this Declaration may be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission, signed by Unit Owners owning not less than two-thirds (2/3rds) of the total Units, including the votes or Units of the Developer, provided, however, that all lien holders of record have been notified by certified mail of such change, modification or rescission, and an affidavit by the secretary of the Association certifying to such mailing is made a part of such instrument; and further provided that during the period of time that the Developer maintains weighted voting rights under Class B membership in the Association such amendment(s) shall require approval by FHA, VA and/or HUD prior to becoming effective.

However, if the Act, the Declaration or the Bylaws require the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all Unit Owners or all lien holders or both as required by the Act or this Declaration. The change, modification or rescission, whether accomplished under the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the office of the Register of Deeds of Rutherford County, Tennessee; provided, however, that no provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act.

Notwithstanding the above, the Developer shall have the right to make and record any necessary amendment to this instrument for the express purpose of completion of development or correction of clerical errors or as may be required to obtain FHA/VA and/or FNMA approval for the horizontal property regime. Additionally, so long as the Developer maintains weighted voting rights under Class B membership in the Association, the Developer shall have the right and authority to reconfigure the layout, floorplan or other aspects of any Units or the location of any Units as determined by the Developer.

Any amendments adopted pursuant to this Section shall be evidenced by a Supplemental Declaration signed by a party or parties holding the requisite number of votes required to adopt the amendment, which Supplemental Declaration shall be recorded in the Register's Office for Rutherford County, Tennessee. Any such Supplemental Declaration which has been properly enacted or adopted, shall be binding upon all Owners without regard for whether all of the Owners signed the subject Supplemental Declaration.

22. Notices. Notices provided for in the Act, Declaration or Bylaws shall be in writing, and shall be addressed if to a Unit Owner, to the address of such Owner's Unit, and if to the Association or Board, as the case may, be to the registered office, as set forth in Charter of the Association or to such other address as may be designated by the Association or Board from time to time, or at such other address as may be hereinafter provided. The Association or 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 by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

Upon written request to the Board, the holder of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose Unit is subject to such mortgage or trust deed.

23. Severability. If any provision of the Declaration or Bylaws, or any section, sentence, clause, phrase, word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the Bylaws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration or the Bylaws shall be construed as if such invalid part was never included therein.

24. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the Queen of England, Elizabeth II.

25. Rights and Obligations. Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All future Unit Owners and Occupants shall be subject to and shall comply with the provisions of this Declaration. Any restrictions or rules in the Bylaws which are more than administrative in nature such as, but not limited to, reservations and future rights of the Developer, are hereby incorporated into and made a part of this Declaration by reference. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time an interest or estate in said land, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

All present and future Unit Owners, tenants and Occupants of a Unit shall be subject to, and shall comply with, the provisions of the Bylaws appended hereto and recorded herewith as they may be amended from time to time. The acceptance of a deed of conveyance, devise or of a lease to a Unit, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the said Bylaws and any rules and regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Unit Owner, tenant or Occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

The terms and conditions of the Declaration, Bylaws and rules and regulations may be incorporated by reference in, and become part of, the agreement between any mortgagee and any present or future Unit Owner who enters into such an agreement with a mortgagee. When so incorporated, any default in the terms and conditions of the Declaration, Bylaws and rules and regulations may be considered as a default by the mortgagee, whereupon said mortgagee, after exercising its option to declare a default, shall then have all of the rights and privileges arising as a result of a default under its agreement with said Unit Owner.

26. Trustee as Unit Owner. In the event title to any Unit is conveyed to a land title holding trust, 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 they 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 Declaration against such Unit. No claim shall be made against any such title holder 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.

27. Condemnation. In the event of a taking in condemnation or by eminent domain of a part of the Common Elements, the award made for such taking shall be payable to the Board for and on behalf of the Association and all mortgagees affected. If a majority of the Board in their discretion, with written consent of a majority of the mortgagees affected, approve the repair and restoration of such Common Elements, and the Board shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that the Board and the mortgagees do not approve the repair and commence restoration of such Common Elements within one hundred twenty (120) days after taking by the public or private authority, the Board shall disburse the net proceeds of such award on the basis of such Unit's percentage of ownership in the Association to the Unit Owners and the mortgagees as their interests may appear.

28. Rights Reserved. The Unit Owner's right of enjoyment in the property commonly owned by the Association as herein created shall be subject to:

(a) The right of the Association, as provided in its Bylaws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for such period as it considers appropriate for any infraction of its published rules and regulations; and

(b) The right of the Association to charge reasonable fees for the use of the parts of the Common Elements; and

(c) The right of the Association to diminish in any way or to dedicate or transfer all or any part of the Common Elements to any public agency or authority for such purposes and subject

to such conditions as may be agreed to by the members entitled to vote thereon, provided that no such diminution, dedication or transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless the Developer (its successors or assigns) and members of the Association entitled to cast ninety percent (90%) of the total votes of members have been recorded, agreeing to such act; and

(d) The right of the Association to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it shall deem necessary for the proper servicing and maintenance of the Common Elements and the Units:

29. Provisions Relative to Mortgagee's Rights and to Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Regulations. Notwithstanding anything to the contrary contained in this Declaration, or in the Bylaws which are attached hereto, all terms, conditions and regulations which are now existing, or which may be amended from time to time, by the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") pertaining to horizontal property regimes are hereby incorporated as terms and conditions of the Declaration and Bylaws and such shall be governing upon the Property, the Developer, and the Association, so long as such terms or conditions are not inconsistent with the laws of the State of Tennessee as found in Tennessee Code Annotated, Section 66-27-101, et seq., as such may be amended.

Specifically, without limitation upon the foregoing, the following provisions shall be fully effective and controlling over any terms of the Declaration or Bylaws which are in conflict. Any portions of such Declaration or Bylaws which are in conflict with this paragraph, or any portion of the FHLMC and FNMA regulations pertaining to horizontal property regimes, are hereby deleted and the following rights of mortgagees are itemized as follows:

(a) A first mortgagee, and any insurer or guarantor of any mortgage or deed of trust, under a Unit at such party's request is entitled to a financial statement of the Association for the preceding fiscal year.

(b) Any first mortgagee, or other transferee, of a Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage, deed of trust, foreclosure of the mortgage or deed of trust, or deed in lieu of foreclosure shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit, which accrue prior to the time such holder comes into possession of the Unit.

(c) Unless two-thirds (2/3) of the first mortgagees (based upon one (1) vote for each mortgage owned), or owners (other than the Developer) of Units have given their prior written approval, the Association shall not be entitled to:

(i) Change the percentage interests of ownership of all or any Unit or Unit Owners, except that percentage ownership of the Association may be reduced due to the addition of

a phase or phases to the horizontal property regime as provided hereinabove.

(ii) Partition or subdivide any Unit or the Common Elements.

(iii) By act or omission seek to abandon the horizontal property regime or status of the Property, or encumber, sell or transfer the Common Elements, except for the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements.

(iv) Use hazard insurance proceeds for losses to any Property (whether to individual Units or Common Elements) for other than the repair, replacement, or reconstruction of such improvements, except as provided in Tenn. Code Ann., Section 66-27-118, in case of substantial loss to the Units and/or Common Elements to the horizontal property regime.

(d) Unit owners, first mortgage holders, and insurers or guarantors of any first mortgage shall have the right to examine the books, records, current copies of the Declaration and Bylaws, and rules and regulations of the Association during normal business hours and upon request.

(e) An adequate reserve fund for maintenance, repair and replacement of Common Elements which must be replaced on a periodic basis will be established and funded by regular monthly payments rather than by special assessments. A working capital fund for the initial months of operation equal to at least two (2) months' assessments for each Unit must be established, collected and transferred to the Association at the time of closing of sale by the Developer of each Unit and maintained in an account for the use and benefit of the Association.

(f) As set forth in Tenn. Code Ann., Section 66-27-120, all taxes, assessments and charges which may become liens prior to the first mortgage under the laws of the State of Tennessee shall relate only to the individual Unit and not to the horizontal property regime as a whole.

(g) No Unit Owner, or any other party shall have priority over any rights of the first mortgagees of Units and/or Common Elements.

(h) Any agreement for professional management of the horizontal property regime, whether it be by the Developer, its successors and assigns, or any other person or entity, may be terminated on ninety (90) days' written notice and the terms of any such contract shall so provide and shall not be of a duration in excess of three (3) years. Prior to passage of control from the Developer, the Association shall not be bound, directly or indirectly, to contracts or leases unless there is a right of termination of such upon not more than ninety (90) days' notice without penalty.

(i) Upon written request, the Association shall give to any mortgagee of a Unit, the FHLMC, FNMA, any lending institution servicing such mortgages as are acquired by the FHLMC or FNMA, or any insurer or guarantor of a mortgage or deed of trust on a Unit, timely notice in writing of any loss to or the taking of the Common Elements if such loss or taking exceeds \$50,000.00, or of any other condemnation or casualty loss that affects either a material portion of

00 73

the project or the Unit securing its mortgage, a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, or any proposed action that requires the consent of a specified percentage of mortgagees. The Association may rely upon the information contained in the book entitled "Mortgages of Units" as must be established pursuant to the Bylaws, for a list of mortgagees to be notified hereby.

(j) The interest of a first mortgagee in a mortgaged Unit shall be superior to the interests of any other person, group, partnership, corporation or entity of any kind, including any interest the Board, the Developer or any Unit Owner may have in any portion of the premises, regardless of the nature of the interest or the manner in which it is acquired.

(k) Notwithstanding the above, any first mortgagee shall have all of the rights granted to a first mortgagee herein, and in addition shall have all of the rights granted to an institutional first mortgagee under its Deed of Trust, and under the laws of the State of Tennessee.

(l) A first mortgagee of a Unit Owner, upon written request, is entitled to written notification from the Association of any default in the performance by such Unit Owner of any obligation under this Declaration and/or Bylaws which is not cured within sixty (60) days.

(m) The casualty and liability insurance and fidelity bond coverage required to be maintained by the Association shall meet the requirements specified in FNMA Lending Guide, Chapter Three, Part 5, "Insurance Requirements."

IN WITNESS WHEREOF, the undersigned has executed this Declaration this the 14th day of May, 2001.

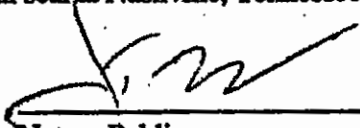
Craighead Development, LLC
a Tennessee limited liability company

By: Carl A. Neuhoff, Jr.
Carl A. Neuhoff, Jr., Assistant Chief Manager

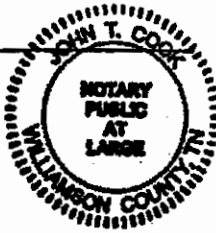
STATE OF TENNESSEE
COUNTY OF DAVIDSON

BEFORE me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared Carl A. Neuhoﬀ, Jr., with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Assistant Chief Manager of Craighead Development, LLC, a Tennessee limited liability company, the within named bargainor, and that he as such Assistant Chief Manager being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Assistant Chief Manager.

WITNESS my hand and official seal at Nashville, Tennessee, this 14th day of May, 2001.


Notary Public

My Commission Expires: April 10, 2005



PoplarDCL.575.wpd

This instrument prepared by:
Craighead Development, LLC
700 Craighead Street
Suite 305
Nashville, TN 37204

Jennifer H Gerhart, Register
Rutherford County Tennessee
Rec #: 391668 Instrument 12769
Rec'd: 85.00 MEK: 75 Ps 276
State: 0.00
Clerk: 0.00
EDP: 2.00
Total: 87.00
Recorded
6/10/2004 at 9:00
in Record Book
396 Pages 259-275

**SECOND SUPPLEMENTARY DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
POPLAR GROVE TOWNHOMES, A HORIZONTAL PROPERTY REGIME
WITH PRIVATE ELEMENTS**

THIS SECOND SUPPLEMENTARY DECLARATION, made and entered into by
CRAIGHEAD DEVELOPMENT, LLC hereinafter referred to as the "Developer".

WITNESSETH:

Craighead Development, LLC was designated as Developer under the Declaration of Covenants, Conditions and Restrictions for Poplar Grove Townhomes, a Horizontal Property Regime with Private Elements as of record in Record Book 68, page 673, Register's Office for Rutherford County, Tennessee, as amended in Record Book 73, page 861, said Register's Office (collectively the "Declaration"); and

WHEREAS, pursuant to Article 21 of the Declaration, Developer has the right to amend the Declaration from time to time; and

WHEREAS, Developer has determined to replace the entire Exhibit "C" consisting of eleven (11) pages and replace the same with the attached Exhibit "C", and to acknowledge that four units have been eliminated from the Regime.

NOW THEREFORE, for and in consideration of the premises and pursuant to the terms of the Declaration, Developer hereby declares this Supplementary Declaration as follows:

1. The Exhibit "C" attached to and being a part of the Declaration of Covenants, Conditions and Restrictions for Poplar Grove Townhomes, a Horizontal Property Regime with Private Elements as of record in Record Book 68, page 673, Register's Office for Rutherford County, Tennessee, as amended in Record Book 73, page 861, said Register's Office, with the current Exhibit "C" appearing at Record Book 73, pages 863 to 873, is hereby deleted, voided, vacated and superceded. In lieu of the said current Exhibit "C", the attached Exhibit "C" is hereby inserted into and made a part of said Declaration. All references to Exhibit "C" as contained in the Declaration shall mean and refer to the Exhibit "C" attached hereto.

2. The Developer hereby declares that, notwithstanding any provision of the Declaration to the contrary, Units 500, 501, 508, 509, 701, 703, 705, and 707 are one story dwellings, and shall be maintained as such in perpetuity.

3. The Developer further declares that Units 510, 511, 709 and 711 are hereby deleted from the Regime, the same having been removed from the plans for the Property, and the same having never been constructed or built. Any reference to Units 510, 511, 709 and 711 on the original Exhibit "C", or elsewhere in the Declaration, is hereby permanently voided, vacated and terminated.

IN WITNESS WHEREOF, the undersigned has executed this Second Supplementary Declaration this the 8th day of June, 2004.

Craighead Development, LLC
a Tennessee limited liability company

By: Carl A. Neuhoff, Jr.
Carl A. Neuhoff, Jr., Asst. Chief Manager

STATE OF TENNESSEE
COUNTY OF DAVIDSON

BEFORE me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared Carl A. Neuhoff, Jr., with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Asst. Chief Manager of Craighead Development, LLC, a Tennessee limited liability company, the within named bargainor, and that he as such Asst. Chief Manager being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Asst. Chief Manager.

WITNESS my hand and official seal at Nashville, Tennessee, this 8TH day of June, 2004.

Stephen W. Arthur

Notary Public

My Commission Expires: 5/30/07



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Legal Description

BEING a tract of land lying in Smyrna, Rutherford County, Tennessee, and being more particularly described as follows:

COMMENCING at an existing iron rod at the intersection of the easterly right-of-way line of Chaney Road, 60 feet in width, and a corner common with Rutherford County Board of Education, as of record in Deed Book 377, Page 102, at the Register's Office for Rutherford County, Tennessee;

Thence, with the easterly right-of-way line of said Chaney Road, South 03 deg. 40 min. 24 sec. West, 431.73 feet to an iron rod set, the True Point of Beginning;

Thence, leaving the easterly right-of-way line of said Chaney Road with a severance line through the property of Julia Marie C. McCormick, as of record in Deed Book 521, Page 586, at the Register's Office for Rutherford County, Tennessee, South 70 deg. 28 min. 11 sec. East, 957.86 feet to an iron rod set in the westerly property line of First Presbyterian Church of Smyrna, as of record in Deed Book 576, Page 310, at the Register's Office for Rutherford County, Tennessee;

Thence, with the westerly property line of First Presbyterian Church of Smyrna, South 28 deg. 25 min. 36 sec. West, 445.27 feet to an existing iron rod in the northerly property line of Assembly of God, as of record in Deed Book 576, Page 315, at the Register's Office for Rutherford County, Tennessee;

Thence, with Assembly of God, North 83 deg. 48 min. 32 sec. West, 503.15 feet to an existing iron rod;

Thence, North 85 deg. 32 min. 16 sec. West, 30.70 feet to an existing iron rod in the easterly right-of-way line of said Chaney Road;

Thence, with the easterly right-of-way line of Chaney Road, North 30 deg. 55 min. 32 sec. West, 257.48 feet to an iron rod set;

Legal Description Continued

Thence, along a curve to the right, with an arc length of 189.16 feet, the radius of which is 313.25 feet, the central angle of which is 34 deg. 35 min. 56 sec., the chord of which is North 13 deg. 37 min. 34 sec. West, 186.29 feet to an iron rod set;

Thence, North 03 deg. 40 min. 24 sec. East, 253.74 feet to the Point of Beginning, containing 414,286 square feet (9.51 acres, more or less), according to the Boundary and Topographic Survey dated June 16, 2000, and revised August 9, 2000, prepared by Cherry Land Surveying, Inc., 622 West Iris Drive, Nashville, Tennessee 37204, R. Scot Cherry, RLS, Tennessee License No. 1512.

Being the same property conveyed to Craighead Development, LLC, a Tennessee limited liability company by deed from Trustees, Murfreesboro District, Tennessee Annual Conference United Methodist Church as of record in Record Book 21, page 1701, Register's Office for Rutherford County, Tennessee.

EXHIBIT "A", Page 3 of 4
Street Addresses

Record 1
68 Pg

Street Addresses as assigned by the City of Smyrna:

All addresses are Smyrna, TN 37167

<u>Unit Number</u>	<u>Street Address</u>
401	401 Heath Place
403	403 Heath Place
405	405 Heath Place
407	407 Heath Place
409	409 Heath Place
410	410 Heath Place
411	411 Heath Place
412	412 Heath Place
413	413 Heath Place
414	414 Heath Place
415	415 Heath Place
416	416 Heath Place
417	417 Heath Place
418	418 Heath Place
419	419 Heath Place
420	420 Heath Place
421	421 Heath Place
422	422 Heath Place
423	423 Heath Place
424	424 Heath Place
425	425 Heath Place
427	427 Heath Place
429	429 Heath Place
431	431 Heath Place
433	433 Heath Place
435	435 Heath Place
437	437 Heath Place
439	439 Heath Place
441	441 Heath Place
443	443 Heath Place
445	445 Heath Place
447	447 Heath Place
500	500 Heath Place
501	501 Heath Place
502	502 Heath Place
503	503 Heath Place
504	504 Heath Place
505	505 Heath Place
506	506 Heath Place
507	507 Heath Place

EXHIBIT A, Page 4 of 4

<u>Unit Number</u>	<u>Street Address</u>
508	508 Heath Place
509	509 Heath Place
510	510 Heath Place
511	511 Heath Place
601	601 Heath Place
603	603 Heath Place
605	605 Heath Place
607	607 Heath Place
609	609 Heath Place
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625	625 Heath Place
627	627 Heath Place
700	700 Heath Place
701	701 Heath Place
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705	705 Heath Place
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719	719 Heath Place
721	721 Heath Place
723	723 Heath Place

**Record
68 P₄**