This instrument prepared by and mail to: **A. Harrison Johnson, Jr., Attorney**
213 Fifth Avenue North
Nashville, TN 37219

OXTON HILL
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, hereinafter sometimes referred to as the "Declaration", set forth and entered into as of this the 9th day of August, 1996, by the undersigned "Declarant":

W I T N E S E T H:

WHEREAS, Declarant is the owner of certain real property in Nashville, Davidson County, Tennessee, known as **OXTON HILL**, a Plat of which is of record in Book **8250**, page **611**, Register's Office for Davidson County, Tennessee (the "Plat" herein); and

NOW, THEREFORE, Declarant does hereby declare that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

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

(a) "Association" shall mean and refer to **OXTON HILL** Townhouse Corporation, a Tennessee not-for-profit corporation, its successors and assigns.

b) "Board" means the Board of Directors of **OXTON HILL** Townhouse Corporation.

(c) "By-Laws" means the By-Laws of **OXTON HILL** Townhouse Corporation, attached hereto as Exhibit C and made a part hereof, as amended from time to time.

(d) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property, including contract sellers , but excluding contract buyers or those having such interest merely as security for the performance of an obligation.

(e) "Property" (whether singular or plural) means all the land, property and space which is the subject of this Declaration (by amendment or otherwise), and all improvements and structures erected, constructed or contained therein or thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners.

(f) "Common Area" or "Common Elements" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The common area to be owned by the Association is as described in the attachment hereto, marked "Exhibit B" and/or as shown on the above Plat [as public utility and drainage easements, "Open Space", and "Detention Area"]. **Oxton Hill Lane** is a public street.

(g) "Unit" means the free-standing Residences to be built on each Lot shown on the Plat, which separate buildings are not owned in common with the Owners of other Units.

(h) "Member" shall mean and refer to every person or entity who holds membership in the Association.

(i) "Declarant" means **Dudley Warner Properties, LLC,** a Tennessee limited liability company, its successors and assigns, provided such successors or assigns are designated in writing by Declarant as a successor or assign of the rights of Declarant set forth herein.

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

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

(l) "Majority" or "majority of the Unit Owners" means the owners of more than fifty (50%) percent of the membership in the Association, present and then eligible to vote. Any specific percentage of Unit Owners means that percentage of Unit Owners who in the aggregate own such specified percentage of the entire membership in the Association, present and then eligible to vote.

(m) "Lot" shall mean and refer to any numbered plot of land shown upon Plat, with the exception of the Common Area and dedicated streets.

SECTION 2. Lots. The legal description of each Lot shall consist of the identifying number or symbol of such Lot as shown on the Plat. Every deed, lease, mortgage, deed of trust or other instrument shall legally describe a Lot by its identifying number or symbol as shown on the Plat and every such description shall be

deemed good and sufficient for all purposes. No Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his Lot to be separated into any tracts or parcels different from the whole Lot as shown on the Plat.

SECTION 3. (a) Association of Owners and Administration and Operation of the Property. There has been or will be formed an Association having the name **"OXTON HILL TOWNHOUSE CORPORATION"**, a Tennessee corporation, which Association shall be the governing body for all of the Owners, for the maintenance, repair, replacement, administration and operation of the Property, this Declaration and the By-Laws. The By-Laws for the Association shall be the By-Laws attached to the 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 By-Laws. 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 held and applied by it for the use and benefit of Owners in accordance with the provisions of the Declaration and By-Laws. Each Owner shall be a member of the Association so long as he is an Owner. An Owner's membership shall automatically terminate when he ceases to be an Owner. Upon the conveyance or transfer of an Owner's ownership interest to a new Owner, the new Owner shall simultaneously succeed to the former Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be equal to **EIGHT**. Each Owner's respective percentage of ownership interests in the Association shall be the result of a fraction, the numerator being ONE and the denominator being **EIGHT** (the number of Lots submitted by the Plat).

(b) Non-Liability of the Directors, Board, Officers and Declarants. Neither the directors, Board, officers of the Association, nor the Declarants shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors, Board, officers or Declarants, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The Unit Owners shall indemnify and hold harmless each of the directors, Board, officers, or Declarants, and their respective heirs, executors, administrators, successors and assigns in accordance with the By-Laws.

SECTION 4. Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property, or any questions of interpretation or application of the provisions of the Declaration or By-Laws, the determination thereof by the Board shall be final and binding on each and all such Owners.

SECTION 5. Ownership of the Association. Each Owner shall be entitled to twelve and one-half (12.5%) percent of the ownership in the Association. The percentages of ownership interests shall remain constant unless amended pursuant to the reservation set forth herein, or unless hereafter changed by recorded amendment to this Declaration as provided for herein or consented to in writing by the necessary Owners and first mortgagees, except for obvious scrivener's mistakes, which Declarants may correct without joinder of others. Said ownership interest in the Association shall be represented by a deed to that Owner from the previous Owner of that Lot, and the Association shall be owned by the Owners in accordance with their respective percentages of ownership. The ownership of each Lot shall not be conveyed separate from the percentage of ownership in the Association corresponding to said Lot. The ownership in the Association corresponding to any Lot shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Lot may refer only to the fee title to that Lot.

SECTION 6. Use of the Common Elements. The use of the Common Elements shall be limited or restricted by the Board, depending upon an abutting Lot Owner's particular needs and convenience with regard to Common Elements which may abut his or her Lot. Each Owner shall have the right to use the Common Elements in common with all other Owners, as may be required for the purposes of necessity, access, ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Owner. Such right to use the Common Elements shall extend to not only each Owner, but also to his agents, servants, tenants, family members, invitees and licensees. Such rights to use the Common Elements shall be subject to and governed by the provisions of the Declaration, By-Laws and rules and regulations of 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 By-Laws. 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.

SECTION 7. (a) Common Expenses. Each Owner shall pay his proportionate 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 By-Laws (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. Such proportionate share of the common expenses for each Owner shall be in accordance with his percentage of ownership in the Association. Payment of common expenses, including any prepayment thereof required by contract for a sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the By-Laws. No Owner shall

be exempt from payment of his proportionate share of the common expenses by waiver or non use or enjoyment of the Common Elements or by abandonment of his Unit. If any Owner shall fail or refuse to make any such payment of the common expenses when due in advance on the first day of each month, then (i) a late charge of $10, plus $1 for each day thereafter that such payment has not been made or (ii) the Board may, by resolution or rule, increase the said late payment charge to a reasonable amount, considering the time and circumstances involved. The Board's decision as to reasonableness shall be binding upon all parties, and such payment, together with such late payment charge (the "indebtedness"), shall constitute a lien on the interest of such Owner in the Property.

(b) Enforcement of Lien. FOR AND IN CONSIDERATION of the privileges, protections, mutual enjoyment and use of the Common Elements and the premises contained herein, the receipt of which is hereby acknowledged and any assumption of the obligations by transferees as required hereunder, and to secure the payment of said Common Expenses, principal, interest, and attorney fees, a lien is expressly retained by the Association on each and every Owner's Unit and prorata interest in the Association (referred to in this subparagraph 7(b) as "property").

And now, for the purpose of better and more effectually securing the payment of said lien indebtedness; rendering unnecessary court proceedings for the enforcement of said lien in the event of the non-payment of said indebtedness and payments thereof, as they become due, and for the consideration of one dollar paid in cash, receipt of which is acknowledged, the said Owners, their heirs, administrators, and assigns, hereinafter referred to as trustors, hereby transfer and convey unto A. Harrison Johnson, Jr., Trustee, his successors and assigns, the real estate hereinbefore described, with the appurtenances, estate, title and interest thereto belonging upon the following uses and trusts:

> Trustors agree to pay their prorata share of Common Expenses when due and further agree to pay all taxes and assessments thereon, general or special, and to pay them when due, and, upon demand of said trustee or the lawful owner and holder of said indebtedness, to pay, discharge, or remove, any and all liens (except a First Mortgage or Deed of Trust) which may be hereafter placed against said property and which shall adversely affect the lien of this instrument or enforcement of the terms and provisions hereof; to keep the improvements on said property in good repair and preservation, and in case the trustee or his successors or the lawful owner and holder of said indebtedness shall hereafter be

required to appear in any court or tribunal to enforce, or defend the title to, or possession of, said property, or the lien of this instrument, or appear in any court to prove the above indebtedness, all the costs and expenses of such appearance or proceedings, together with a reasonable attorney's fee, shall be allowed, and be payable by trustors upon demand of the trustee or lawful owner or holder of said indebtedness, and, upon failure to do any of these things, then said trustee, or the lawful owner and holder of said indebtedness may do any or all of these things and the amounts so paid shall bear interest at the then highest maximum effective rate of interest per annum for home loans then legally collectible in Tennessee from the due date and shall be and become a part of the indebtedness secured hereby.

Now, if trustors shall pay their prorata share of Common Expenses aforesaid when due, and pay any and all sums when due, as aforesaid, then this trust conveyance shall be of no further force or effect. But if said indebtedness, or any payment thereof, or interest thereon, is not paid promptly when due, or if, failing to pay said other sums when due, as herein provided, trustors fail to reimburse the trustee, or lawful owner and holder of said indebtedness for all sums, with interest, so expended by said trustee, or lawful owner and holder of said indebtedness, within thirty days from date of such payment, this trust conveyance shall remain in full force and effect, and the said trustee, or his successor in trust, is hereby authorized and empowered, upon giving twenty days' notice by three publications in any newspaper, daily or weekly, published in Davidson County, Tennessee, to sell said property at the front door of the Court House in said County to the highest bidder for cash, at public outcry, free from the equity or right (statutory or otherwise) of redemption, homestead, dower, spouse's elective share and all other rights and exemptions of every kind, which are hereby expressly waived; and the said trustee, or his successor in trust, is authorized and empowered to execute and deliver a deed to the purchaser. The Association may bid at any sale under this trust conveyance. The Trustee

may, at any time after default in the payment of any of said indebtedness, enter and take possession of said property, and shall only account for the net rents actually received by him. It is further agreed that, in the event the trustee fails, before selling said property, as herein provided, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to him by the trustee of a deed for said property. In case of sale hereunder, the proceeds will be applied by the trustee as follows:

1st. To the full and complete satisfaction of the interest of the first mortgage holder, unless arrangements have been made for the assumption of the first mortgage by the subsequent purchaser.

2nd. To the payment of all costs, charges and expenses of executing this conveyance and enforcing said lien as herein provided; also reasonable attorney's fees for advice in the premises, or for instituting or defending any litigation which may arise on account of the execution of this conveyance, or the enforcement of said lien; also the expenses of any such litigation.

3rd. To the payment of all taxes which may be unpaid on said premises.

4th. To the payment of all unpaid indebtedness herein secured, and any and all sums expended in the protection of said property, as herein authorized.

5th. The residue, if any, will be paid to trustor(s) legally entitled thereto, their order, representatives or assigns.

In case of the death, absence, inability, or refusal to act of said trustee at any time when action under the foregoing power and

trusts may be required or for any other reason, the lawful owner and holder of said lien is hereby authorized and empowered to name and appoint a successor to execute this trust by an instrument in writing to be recorded in the Register's Office for Davidson County, Tennessee, and the title herein conveyed to the above named trustee shall be vested in said successor.

The word "Trustors" when used herein shall apply to parties both singular and plural.

This transfer and conveyance, and the lien for common expenses payable by an Owner which is secured by the transfer and conveyance shall both be subordinate to the lien of a recorded First Mortgage or Deed of Trust on the interest of such Owner, regardless of whether the First Mortgage or Deed of Trust was recorded before or after this instrument, 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 accepts a conveyance of any interest therein (other than as security) or forecloses its Mortgage or Deed of Trust. While the lien for assessments may be extinguished, the personal indebtedness therefor shall remain and be the personal obligation of the Owner who owned the Unit when the assessment came due. Any delinquent assessments (after lien extinguishment) may be reallocated and assessed among all Units as a common expense. This subparagraph shall not be amended, changed, modified or rescinded without the prior written consent of all First Mortgagees and Beneficiaries of record.

SECTION 8. Mortgages and Deeds of Trust. Each Owner shall have the right, subject to the provisions herein, to make separate mortgages and deeds of trust for his respective Unit together with his respective ownership interest in the Association. No 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 his own Unit and the respective percentage interest in the Association corresponding thereto.

ARTICLE II

PROPERTY RIGHTS

SECTION 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) the right of the Association (acting by the Board) to suspend the voting rights of an Owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(b) the right of the Association (acting by the Board) to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by all the Members, agreeing to such dedication or transfer, has been recorded; providing, however, that such consent shall not be required for the dedication of utility or service easements;

(c) The right of the Association (acting by the Board) to grant private access and/or private utility or drainage easements to private individuals or entities, to serve neighboring properties.

SECTION 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. Membership in the Association may not be conveyed separate from ownership in the Lot.

SECTION 3. Association's Right of Entry. The authorized representatives of the Association or the Board shall be entitled to reasonable access to the individual Lots as may be required to correct any existing violation of the provisions of this Declaration, or in connection with the preservation of any individual Unit or in the event of an emergency, or in connection with maintenance of, repairs or replacements within the Units or Common Elements, or any equipment, facilities or fixtures affecting or serving the other Unit or Common Elements, or to make any alteration required by any governmental authority.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Every owner of a Lot which is subject to a lien for assessments shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

SECTION 2. The Association shall have one class of voting membership.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarants, for each Lot owned within the Properties, hereby covenant, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) annual assessments or charges, and

(b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

SECTION 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties, and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose, or for the use and enjoyment of the Common Area, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

SECTION 3. Maximum Annual Assessment. Until January 1, 1998, the maximum annual assessment shall be SIX HUNDRED DOLLARS ($600.00) Dollars per Unit.

(a) From and after January 1, 1998, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above 10% by a vote of at least a majority of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

SECTION 4. Payable Annual Assessment. The Board of Directors shall fix the payable annual assessment at an amount not in excess of the maximum annual assessment, subject to the provisions of Sections 7 and 8 of this Article.

SECTION 5. Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, the Association (acting by and through the Board) may levy, in any calendar year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Units and may be collected on a monthly basis, without additional fee or cost to such members paying on a monthly basis.

SECTION 6. Rate of Annual Assessment. Annual assessment must be fixed at a uniform rate for all Units and may be collected on a monthly basis. The books and records for the Association will be kept in such a manner that it is possible to determine and ascertain (i) such sums as are expended by the Association for development, improvement, maintenance and upkeep of all recreational facilities of the Association, and (ii) such sums as are expended for other purposes.

SECTION 7. Date and Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lot(s) on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment to every Owner subject thereto. Written notice of such assessment shall be sent to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on specified Lot(s) have been paid. A properly executed certificate of the Association as to the status of the assessments on a Lot is binding upon the Association as of the date of its issuance.

SECTION 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the then maximum applicable formula rate of interest legally chargeable under Title 47, Chapter 14, Sections 101 et seq., Tennessee Code Annotated, as it may be amended from time to time, on a per annum basis until reinstatement or the completion of foreclosure. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessments. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Unit or Lot.

SECTION 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Unit which is subject to any first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as the payment thereof which become due prior to such sale or transfer (provided, that such unpaid assessment shall be reallocated among the other Units). No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

SECTION 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Tennessee shall be exempt from the assessments created herein **[unless there is a Common Element contained within the boundaries of a Lot, in which event that particular Lot Owner shall be responsible for <u>any</u> state or local taxes]**. However, no land or improvements devoted to dwelling use or access shall be exempt from said assessments in any case.

ARTICLE V

MAINTENANCE, REPAIRS AND REPLACEMENTS

Each Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within his own Lot or exclusively serving his own Lot ("Unit Fixtures") or the Board may cause the same to be done at the expense of the Owner. Maintenance of, repairs to and replacements to the Common Elements, except those referred to elsewhere herein, shall be the responsibility of and shall be furnished by the Association. The cost of maintenance of, repairs to and replacements to the Common Elements shall be part of the common expenses, subject to the By-Laws, rules and regulations of the Association. The expenses for the maintenance, repair or replacement of Unit Fixtures shall be borne by the owner of the Lot to which such Unit Fixtures are appurtenant and at the discretion of the Board, maintenance of, repairs to and replacements within the other Unit Fixtures may be assessed in whole or in part to Owners benefitted thereby. And, further, at the discretion of the Board, the Board may direct Owners who stand to be directly benefitted by such maintenance of, repairs to and replacement of abutting Common Elements to arrange for such maintenance, repairs and replacement in the name and for the account of such benefitted Owners, pay the cost thereof with their own funds, and procure and deliver to the Board such indemnities, lien waivers and contractor's and subcontractor's sworn statements as may be required to protect the Property from all furnishers', mechanics' or materialmen's lien claims that may arise therefrom. All decks, patios and backyards shall be the maintenance, repair and replacement responsibility of the individual Owner to which they attach.

If, due to the act or neglect of an Owner, or of his agent, servant, tenant, family member, invitee, licensee or household pet, damage shall be caused to the Common Elements or to a Lot or Unit owned by others, or maintenance, repair or replacement are required which would otherwise be a common expense, then such 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 or the Board shall be entitled to reasonable access to the individual Units and/or Lots as may be required in connection with the preservation of any individual Unit in the event of an emergency, or in connection with maintenance of, repairs or replacements within the Common Elements or any equipment, facilities or fixtures affecting or serving other Lots or Units or the Common Elements or to make any alteration required by any governmental authority.

ARTICLE VI

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ARTICLE VII

INSURANCE

SECTION 1. Casualty Insurance on Insurable Area. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

In addition to casualty insurance on the Common Area, the Association, through the Board of Directors, shall obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board of Directors deems appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Dwelling Units, including the structural portions and fixtures thereof, owned by such Owners. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular Common Assessments of the Owners, as levied by the Association. The insurance coverage with respect to the Dwelling Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as Trustee for the Homeowners. [This paragraph shall become effective and operational only if any of the residences and Lots should become encumbered by a first lien deed of trust or mortgage which is governed by **FNMA** or **FHLMA** (Freddie Mac)].

The Board shall have the authority to and shall obtain insurance for the Common Elements, exclusive of the additions within, improvements to and decorating of the Units by the 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. Insurable replacement cost shall be deemed the cost of restoring the Common Elements, 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 Owners in direct ratio to said Owner's respective percentage of ownership in the Association, as set forth in the Declaration, and for the holders of mortgages on his Unit, if any. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against individual Owners. The premiums for such insurance shall be a common expense. However, at the option of the Board, and upon written notice to all Owners, premiums for such insurance shall be separately billed to each Owner for his Unit and his corresponding percentage of ownership in the Association.

In the event of damage to or destruction of any Building or residence as a result of fire or other casualty covered by insurance proceeds (unless more than 2/3rds of any Residence requires reconstruction) the Board may, in its sole and absolute discretion, determine, and without intervention of any 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 Owners directly affected by the damage, in a fair proportion deemed by the Board in its absolute discretion. In its absolute discretion, the Board shall determine which Owners are "directly affected" by the casualty, as long as its determination bears a reasonable relation to actual events. The Board shall not be responsible for the repair, replacement or restoration of any improvements, betterments, wall, ceiling or floor decorations or covering or furniture, furnishings, fixtures, appliances or equipment installed in the Unit by an 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 any Residence and/or Common Elements 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 Owners directly affected by the casualty, the insurance proceeds shall be delivered to the Owners (directly affected by the casualty) or their respective Mortgagees, as their interests may appear.

In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, the institutional holder of any first deed of trust or mortgage on a Unit will be entitled to timely written notice of any such damage or destruction and no

provision of any document establishing the Property will entitle the owner of a Unit or other party to priority over such institutional holder with respect to the distribution to such Unit of any insurance proceeds.

The Association shall have a duty to maintain in effect casualty and liability insurance and fidelity bond coverage, as specified in Sections 501 through 504 of the FNMA Conventional Home Mortgage Selling Contract Lending Guide (herein referred to as the "FNMA Lending Guide"). [This paragraph shall become effective and operational only if any of the residences and Lots should become encumbered by a first lien deed of trust or mortgage which is governed by **FNMA** or **FHLMA** (Freddie Mac)].

The Board shall also have authority to and shall obtain comprehensive public liability insurance, in such amounts as it deems desirable, and workmen's compensation insurance and other liability insurance as it deems desirable, insuring each Owner, mortgagee of record, if any, the Association, its officers, directors, Board and employees 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 Owners, premiums for such insurance shall be separately billed to each Owner for his corresponding percentage of ownership in the Association. The Board shall retain in safe-keeping any such public liability policy for fifteen (15) years after the expiration date of the policy.

The Board shall also have authority to and shall obtain such insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Property against casualty and any loss and each member of the Board and officer of the Association, and member of any committee appointed pursuant to the By-Laws 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. The premiums for such insurance shall be a common expense.

Each Owner shall be responsible for obtaining his own insurance on his or her Residence, the contents of his own Unit and the Unit Fixtures serving his Unit, as well as his additions and improvements thereto, decorating, furnishings, fixtures, and personal property therein, and personal property stored elsewhere on the Property. In addition, in the event an Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that his liability, loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards which may be otherwise (but not otherwise required hereunder) obtained by the Board for all of the Owners as part of the common expenses, as

above provided, said Owner may, at his option and expense, obtain additional insurance.

SECTION 2. Deficiency Assessment. In the event of damage to or destruction of any part of the Common Area Improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against the Owners directly affected by the casualty (as determined in the sole discretion of the Board) or against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Owner. In the event that the Association is maintaining blanket casualty and fire insurance on the Units, the Association shall repair or replace the same from the insurance proceeds available from insurance proceeds only.

SECTION 3. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

SECTION 4. Notice to First Mortgagees. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, the institutional holder of any first deed of trust or mortgage on a Unit will be entitled to timely written notice of any such damage or destruction and no provision of any document establishing the Property will entitle the owner of a Unit or other party to priority over such institutional holder with respect to the distribution to such Unit of any insurance proceeds.

SECTION 5. Federal National Mortgage Association ("FNMA" Coverage). [This Section shall become effective and operational only if any of the residences and Lots should become encumbered by a first lien deed of trust or mortgage which is governed by **FNMA**]. The Association shall also have a duty to maintain in effect casualty and liability insurance and fidelity bond coverage, as specified in Sections 501 through 504 of the FNMA Conventional Home Mortgage Selling Contract Lending Guide (herein referred to as the "FNMA Lending Guide"), a summary of which follows:

.01 **General.** Each hazard insurance policy must be written by an insurance carrier acceptable to FNMA and which falls into a financial category, as designated in Best's Key Rating Guide, of Class VI or better. In lieu of Class VI or better designation, a Seller/Servicer may accept a reinsurance arrangement to be entered into whereby an insurer with a classification lower than Class

VI is covered by reinsurance of a company that does meet FNMA's minimum requirements. This may be accomplished by having both insurance carriers execute and attach to each mortgagor's policy an Assumption of Liability Endorsement, FNMA Form 858, or an equivalent endorsement that provides for one hundred percent (100%) reinsurance of the policy and ninety (90) days notice of reinsurance termination.

Where a reinsurer wishes to limit its per policy exposure, it may insist upon a dollar limitation being stated in the reinsurance endorsement. Such a limitation is acceptable to FNMA, provided the amount of insurance written under the policy does not exceed the limitations stated in the reinsurance endorsement.

In all cases, the primary insurer and the reinsuring company, association or organization must be specifically authorized by law or licensed by the jurisdiction to transact business within the state or territory where the property is located. In addition, policy contracts shall not provide that contribution or assessments may be made against FNMA or may become a lien on the property superior to the lien of FNMA's mortgage.

.02 **Insurance Required by FNMA for Unit Mortgages:** The following insurance is required on property covered by a home mortgage on the date of submission to FNMA:

Property insurance affording protection against loss of damage from fire and other hazards covered by the standard extended coverage endorsement in an amount at least sufficient to pay the mortgage balance. A lesser amount is permitted only where the appraisal made in connection with the mortgage loan provides separate valuations for the land and improvements, and in such instances the insurance must cover the full replacement cost of the improvements;

Policies containing a deductible clause of the higher of $250 or one percent (1%) of the original loan amount, unless a higher maximum

amount is required by state statute, applicable to either Fire or Extended Coverage, or both, will be accepted for single-family properties. For 2-4 family properties, the maximum deductible amount is the lesser of one percent (1%) of the loan amount or $1,000.

.03 **Mortgage Clauses.** All policies of property (hazard) insurance submitted with home mortgages, including mortgages financing unit properties located in the Property, must contain or have attached thereto a "standard" or "union" mortgage clause (without contribution) in the form customarily used in the area in which the property is located. The effect of such clause must be that the coverage of the mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the mortgagor, unless such coverage is prohibited by law of the jurisdiction in which the property is located. A mortgage clause which amounts to a mere loss payable clause is not acceptable. FNMA does not require that it be named on mortgage clauses; however, if FNMA is not named, the Seller shall be named as mortgagee followed by the phrase "its successors and assigns".

.04 **Planned Unit Development ("PUD") Projects: Perils Covered.** The insurance policy shall afford, as a minimum, protection against the following:

a. loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;

b. all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

.05 **Amount of Insurance.** The policy shall be in an amount equal to 100% of current replacement cost of the common areas in the Property,

exclusive of land, foundation, excavation and other items normally excluded from coverage.

.06 **Named Insured and Loss Payable.** The name of the insured under such policies must be set forth therein substantially as follows:

"Association of Owners of the **OXTON HILL** Townhouse Corporation for the use and benefit of the individual owners."

The policies may also be issued in the name of an authorized representative of the Association for the use and benefit of the individual owners. Loss payable shall be in favor of the Association, as a trustee for each Owner and each such Owner's mortgagee. Each Owner and each such Owner's mortgagee, if any, shall be beneficiaries of the policy in the percentage of common ownership or on the basis of another appropriate formula set out in the Declaration. Evidence of insurance shall be issued to each Owner and mortgagee upon request.

.07 **Unacceptable Policies.** Policies are unacceptable where (a) under the terms of the insurance carrier's charter, bylaws, or policy, contributions or assessments may be made against the Association, borrowers, FNMA, or the designee of FNMA, or (b) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon actin by the carrier's board of directors, policyholders, or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA or the borrowers from collecting insurance proceeds.

.08 **Notice of Cancellation or Modification.** Policies may not be canceled or substantially modified without at least 10 days' prior written notice to the Association and to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy.

.09 **Property Insurance - Special Endorsements.**

a. **Projects.** Policies must provide for the following: a waiver of the right of subrogation against Owners

individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and the policy is primary in the event the Owner has other insurance covering the same loss. The requirements stated in this paragraph are generally provided by the insurer in the form of a "Special Condominium or PUD Endorsement" or its equivalent.

b. **PUD Projects:**

(1) **Agreed Amount and Inflation Guard Endorsement** is required, if available.

(2) **Construction Code Endorsements** (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) may be required if the Property is subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s), thereby imposing significant costs in the event of partial destruction of the project by an insured peril.

(3) **Steam Boiler Coverage (if applicable)** is required for loss or damage resulting from steam boiler equipment accidents in an amount not less than $50,000 per accident per location or such greater amount as

deemed prudent based on the nature of the property.

.10 **Flood Insurance:** Where the Property is located within an area which has special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the following requirements apply:

(1) Flood insurance requirements for unit properties located in the Property are the same as those for other home mortgages.

(2) The Association must be required by the terms of the constituent documents hereof to obtain and pay, as a common expense, the premiums upon a policy of flood insurance on buildings and any other common property covered by the required form of policy (herein "insurable property"), in an amount deemed appropriate, but not less than the following:

The lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within any portion of the common areas located within a designated flood hazard area, or; (b) 100% of current "replacement cost" of all such buildings and other insurance property.

.11 **Liability Insurance.**

a. **General.** The Association must be required either by the terms of the constituent documents or by applicable law, to maintain comprehensive general liability insurance coverage covering all of the common areas, public ways of the project, and commercial spaces owned by the Association, whether or not they are leased to some third party.

b. **Amount and Scope of Insurance.** Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. However, such coverage shall be for at least $1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Units and common areas, and legal liability arising out of law suits related to employment contracts of the Association.

c. **Notice of Cancellation or Modification.** Such policies must provide that they may not be canceled or substantially modified, by any party, without at least 10 days' prior written notice to the Association and, to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy.

d. **Supplemental Coverage.** Additional coverages may be required to include protection against such other risks as are customarily covered with respect to projects similar in construction, location and use, including but not limited to, host liquor liability, contractual and all-written contract insurance, employers liability insurance and comprehensive automobile liability insurance.

.12 **Fidelity Bonds.**

a. **General.** By the terms of the appropriate constituent document, blanket fidelity bonds shall be required to be maintained by the

Association for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association.

SECTION 6. Other Insurance. The Board shall also have authority to and shall obtain any other insurance coverage, including comprehensive public liability insurance, in such amounts as it deems desirable, and workmen's compensation insurance and other liability insurance as it deems desirable, insuring each Owner, mortgagee of record, if any, the Association, its officers, directors, Board and employees from liability in connection with the Units and 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 Owners, premiums for such insurance shall be separately billed to each Owner for his corresponding percentage of ownership in the Association.

ARTICLE VIII

EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Board may grant exceptions to these rules.

ARTICLE IX

GENERAL PROVISIONS

SECTION 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2. Severability. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

If any provision of the Declaration or By-Laws, 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 By-Laws 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 By-Laws shall be construed as if such invalid part was never included therein.

SECTION 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years. This Declaration may be changed, modified or rescinded during the first thirty (30) year period by an instrument in writing, setting forth such change, modification or rescission, signed by not less than all of the Owners, and acknowledged, and thereafter, by an instrument signed by all of the Owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements as herein provided, or affect any lien for the payment thereof established herein, and provided 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. Any amendment must be properly recorded.

However, if the Declaration or the By-Laws require the consent or agreement of all Owners or of all lien holders for any action specified 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 the Owners or all lien holders or both as required by the Declaration. The change, modification or rescission, whether accomplished under either of the provisions of these paragraphs, shall be effective upon recording of such instrument in the Office of the Register of Deeds of Davidson County, Tennessee.

SECTION 4. Encroachment. It is understood that residences which adjoin each other and which may have a wall and/or Unit built as a part of the construction of the homes which may be placed upon a Lot dividing line, which wall and/or Building may encroach on such adjoining Lot due to construction or other reasons. Accordingly, an easement is reserved for such encroachments which may result from such construction or other reasons, whether the same now exist or may be caused or created by construction, settlement, or movement of the building, or by permissible repairs, construction or alteration.

SECTION 5. Alterations, Additions or Improvements. Anything herein to the contrary notwithstanding, alterations of the exterior of any Unit, or any additions or improvements thereto, may be made

by any Owner without the prior written approval of the Board. The Board may authorize and charge as common assessments, alterations, additions and improvements of the Common Elements as provided in the By-Laws.

SECTION 6. Decorating. Each Owner, at his own expense, shall furnish and be responsible for all decorating within and outside his or her own Unit.

SECTION 7. Non-Liability of the Directors, Board and Officers. Neither the directors, Board, nor the officers of the Association, shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors, Board, or officers, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The Owners shall indemnify and hold harmless each of the directors, Board, or officers, and their respective heirs, executors, administrators, successors and assigns in accordance with the By-Laws.

SECTION 8. Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property, or any questions of interpretation or application of the provisions of the Declaration or By-Laws, the determination thereof by the Board shall be final and binding on each and all such Owners.

SECTION 9. Notices. Notices provided for in the Declaration or By-Laws shall be in writing, and shall be addressed to the Association or Board, or any Unit Owner, as the case may be, at their respective street addresses on Oxton Hill Lane, Nashville, Tennessee 37215, or at such other address as 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 Owners. Any Owner may designate a different address for notices to him (other than to his or her Unit) 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 Lot is subject to such mortgage or trust deed.

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot estate number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot estate on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by an owner of a unit estate subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of 60 days;

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

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

SECTION 10. Transfer of a Unit - Notice to Association.

A. **Unrestricted Transfers.** An Owner may, without restriction under this Declaration, sell, give, devise, lease or otherwise transfer his Unit, or any interest therein, to any person.

B. **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 the remaining Owners, 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, or an order or direction of a court, or at any other involuntary sale, upon the consent or approval of a majority of Owners.

C. **Financing of Purchase by Association.** The Board shall have authority to make such mortgage arrangements and special assessments proportionately among the respective 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.

D. **Miscellaneous.** (a) A transfer or lease of a Unit, or interest therein, by or to the Board or the holder of any deed of trust or mortgage (or purchaser at foreclosure) on a Unit which comes into possession of the mortgagee of a Lot pursuant to remedies provided in such deed of trust or mortgage, or pursuant to foreclosure of such deed of trust or mortgage, or pursuant to a deed (or assignment) in lieu of foreclosure of such deed of trust or mortgage, shall not be subject to the provisions of this

Section. The provisions of this Section shall in no way impair the rights of a first mortgagee to any of the following:

1. Foreclose or take title to a Lot pursuant to the remedies provided in the mortgage, or

2. Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or

3. Sell or lease a Lot acquired by the mortgagee.

If the occasion arises, The Association shall hold title to or lease any Lot, pursuant to the terms hereof, in the name of the Association, or a nominee thereof delegated by the Board, for the sole benefit of all remaining Owners. The Board shall have the authority at any time to sell, lease or sublease said Lot on behalf of the Association upon such terms as the Board shall deem desirable, but in no event shall a Lot be sold for less than the amount paid by the Association to purchase said Unit unless Owners owning at least fifty (50%) percent of the total ownership of the Association first authorize the sale for such lesser amount.

(b) All notices referred to or required under this Section shall be given in the manner provided in this Declaration for the giving of notices.

(c) The provisions of this Section with respect to the Association's right shall be and remain in full force and effect until the Property as a whole shall be sold unless the provisions of this Paragraph are sooner rescinded or amended by the Owners.

(d) The Board may adopt rules and regulations, from time to time, not inconsistent with the provisions of this Section, for the purpose of implementing and effectuating said provisions.

(e) If any transfer or lease of a Unit is made or attempted without complying with the provisions of this Paragraph, such transfer or lease shall be subject to each and all of the rights of, and remedies and actions available to, the Association hereunder and otherwise.

SECTION 11. 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 Governor of Tennessee, Don Sundquist.

SECTION 12. Rights and Obligations. Each Grantee of the Declarants, 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 Owners and Occupants shall be subject to and shall comply with the provisions of this Declaration. 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 any 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 Owners, tenants and Occupants of a Unit shall be subject to, and shall comply with, the provisions of the By-Laws appended hereto and recorded herewith. 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 By-Laws and any Rules and Regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such 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, By-Laws and Rules and Regulations may be incorporated by reference in, and become part of, the agreement between any first mortgagee and any present or future Owner who enters into such an agreement with a first mortgagee. When so incorporated, any default in the terms and conditions of the Declaration, By-Laws and Rules and Regulations may be considered as a default by the first mortgagee, whereupon said first 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 Owner.

SECTION 13. Separate Real Estate Taxes. Real estate taxes shall be separately taxed to each Owner for his Lot and his corresponding percentage of ownership in the Association (if any taxes are assessed thereon). In the event that such taxes for any year are not separately taxed to each Owner, but rather are taxed on the Property as a whole, then each Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Association.

SECTION 14. 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/or the Owners directly affected thereby, as their interest may appear. If a majority of the Board in their sole and absolute discretion approve the repair and restoration of such Common Elements the Board shall arrange for 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 does not approve the repair and commence restoration of Common Elements within 120 days after taking by the public or private authority, the Board shall disburse the net proceeds of such award on a fair and reasonable basis to the mortgagees directly affected by the condemnation and the balance to the Owners directly affected. The decision of the Board as to fairness and reasonableness shall be binding upon all parties if such decision reasonably relates to the given facts.

If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first deed of trust or mortgage on a Lot directly affected will be entitled to timely written notice of any such proceeding or proposed acquisition and no provision of any document establishing the Property will entitle the owner of a Lot or other party to priority over such institutional holder with respect to the distribution to such Lot of the proceeds of any award or settlement.

SECTION 15. Rights Reserved. The 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 (acting by and through the Board), as provided in its By-Laws, 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 (acting by and through the Board) to charge reasonable fees for the maintenance and/or use of the parts of the Common Elements.

SECTION 16. Remedies. [This Section is intentionally reserved].

SECTION 17. Federal Home Loan Mortgage Corporation Regulations, etc. [This Section shall become effective and operational only if any of the residences and Lots should become encumbered by a first lien deed of trust or mortgage which is governed by **Federal Home Loan Mortgage Corporation Regulations**]. Notwithstanding anything to the contrary contained in this Declaration, or in the By-Laws 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 pertaining to planned unit developments are hereby incorporated as terms and conditions of the Declaration and By-Laws and such shall be governing upon the Property and the Association.

Specifically, without limitation upon the foregoing, the following declarations shall be fully effective and controlling over any terms of the Declaration or By-Laws which are in conflict. Any portions of such Declaration or By-Laws which are in conflict with this Section, or with any portion of Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association regulations pertaining to planned unit developments are hereby deleted, such regulations are substituted herefor and to the extent that it is necessary to amend this instrument so that the Seller's Warranties will be deemed to be true (as defined in the Sellers Guide, issued by the Federal Home Loan Mortgage Corporation, Part III, Subsection 3.207), then this instrument and the accompanying By-Laws shall be deemed to be so amended to conform thereto, and so that the legal guidelines and underwriting standards set forth in Sections 401 through 611 of the "FNMA Lending Guide" shall be incorporated herein by reference, and any conflicting provisions herein shall be deemed to be amended to conform thereto, anything herein to the contrary notwithstanding. The following additional rights of mortgagees are itemized as follows:

(a) A first mortgagee of a Unit at his request is entitled to written notification from the Association of any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under the Declaration, By-Laws, or any of the documents, which is not cured within thirty (30) days.

(b) Any first mortgagee 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 any unpaid assessments or charges against the mortgaged Unit, which accrue prior to the time such holder comes into possession of the Unit (except for claims for a prorata share of such assessments or charges resulting from a prorata reallocation of such assessments or charges to all Units including the mortgaged Unit).

(c) Unless at least seventy-five (75%) percent of the first mortgagees (based upon one (1) vote for each mortgage owned) of Units have given their prior written approval, the Association shall not be entitled to:

(i) Change the prorata interest or obligations of any Unit for (a) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (b) determining the prorata share of each Unit in the Association.

(ii) Use hazard insurance proceeds for losses to any property (whether to individual Units or Common Elements) for other than the repair, replacement, or reconstructions of such improvements, in case of substantial loss to the Units and/or Common Elements.

(iii) Amend the Declaration, By-Laws or survey in such a manner as to adversely affect the rights or security enjoyed by a first mortgage lien holder.

(d) First mortgagees shall have the right to examine the books and records of the Association and/or the Property; and upon request, be permitted or entitled to receive an annual audited financial statement of the Property within 90 days following the end of any fiscal year of the Property; and written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(e) An adequate reserve fund for the replacement of Common Elements will be established and funded by regular monthly payments rather than by special assessments.

(f) 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 project as a whole.

(g) No Owner, or any other party shall have priority over any rights of the first mortgagees of Units pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

(h) The Association shall give to the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association or any lending institution servicing such mortgages as are acquired by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, notice in writing of any loss to or the taking of, the Units or the Common Elements of the project if such loss or taking exceeds Ten Thousand Dollars ($10,000). The Association may rely upon the information contained in the book entitled "Mortgages of Units" as must be established pursuant to the By-Laws, for a list of mortgagees to be notified hereby. All first mortgagees shall register with the "Book of Mortgages".

(i) 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 or any Owner may have in any portion of the premises, regardless of the nature of the interest or the manner in which it is acquired.

(j) 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.

(k) To the extent that the Federal National Mortgage Association shall have an interest in, or be the owner of, or participate in, any first mortgages or deeds of trust affecting any of the Units, then:

(1) Any lien of the Association resulting from nonpayment of assessments against a unit must be subordinate to the first mortgage or deed of trust lien against that unit.

(2) An adequate reserve fund for replacement of common element components must be established, which must be funded by monthly payments rather than extraordinary special assessments. A working capital fund shall be established for the initial months of the operation equal to at least a two months' established common expense charge for each unit. Each unit's share of the working capital fund must be collected and transferred to the Association at the time of closing of the sale of each unit and maintained in a segregated account for the use and benefit of the Association. The purpose of the fund is to insure that the Association's Board of Directors will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the fund are not to be considered as advance payment of regular assessments.

(3) The Association shall give the holders of first deeds of trust and mortgages prompt notice of any default in the Unit mortgagor's obligations under the documents not cured within 30 days of default.

(4) The holders of first deeds of trust or mortgages shall have the right to examine the books and records of the Association and to require annual reports and other financial data.

(5) A reasonable method for dealing with any condemnation of the Property shall be provided, specifying written notice to first mortgagees of any such proceedings and not disturbing mortgagee's first lien priority.

(6) The Association shall have the right to maintain existing improvements regardless of any present or future encroachments of the common elements or a Unit upon another Unit.

(7) The unit shall not be subject to any unreasonable restraints on alienation which would adversely affect the title or marketability of the unit, or the ability of the mortgage holder to foreclose its

first mortgage lien and thereafter to sell or lease the mortgaged unit.

(8) Appropriate fidelity bond coverage must be required for any person or entity handling funds of the Association, including, but not limited to, employees of the professional managers.

SECTION 18. Adoption of Declaration. Accordingly, the Declarants hereby adopt this Declaration of Covenants, Conditions and Restrictions, and all Exhibits hereto attached.

Each Lot Owner, whether existing or in the future, does hereby make, constitute and appoint Declarant his or her true and lawful attorney-in-fact for the sole purpose of amending said Declaration, By-Laws and corporate charter in order to conform to such requirements, as fully as if such Lot Owner had joined herein in person. No joinder of any Lot's first mortgagee shall be required for this purpose, so long as the Lot Owner's interest as a member of the Association is not reduced and his ownership in the Lot is not changed. This power of attorney is given for value, is irrevocable and shall survive the death or disability of all Unit Owners their successors and assigns.

Declarant agrees, for self and successors and assigns, that the requirements of Section 81.51 of the Comprehensive Zoning Ordinance of the Metropolitan Government for Nashville and Davidson County, Tennessee, dealing with the establishment of an Association and the ownership and maintenance of "common open space," and the possibility that if an Association does not maintain the common open space in reasonable order and condition in accordance with the adopted Master Development Plan and the lien stated therein, shall become the obligations and duties of the Association, as stated in the said Section 81.51, as presently constituted. "Common open space" shall be that certain common open space established by the adopted final Master Development Plan for the Planned Unit Development Zoning Ordinance to which the property is subject.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed by its duly authorized officer, as of this the 9th day of August, 1996.

DUDLEY WARNER PROPERTIES, LLC

By: _____
DUDLEY WARNER, also known as Dudley W. Warner II
Chief Manager

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

BOOK 10154 PG 409

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared DUDLEY WARNER, also known as DUDLEY W. WARNER II, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Chief Manager of DUDLEY WARNER PROPERTIES, LLC, the within named bargainor, a Tennessee limited liability company, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as such officer.

Witness my hand and seal at Nashville, Tennessee, this the 12th day of August, 1996.

Mary Ann Johnson
NOTARY PUBLIC

MY COMMISSION EXPIRES: 5/24/97

EXHIBIT "A'
TO DECLARATION

LEGAL DESCRIPTION
OF THE PROPERTY

BOOK 10154 PG 410

Being land located in the 25th Civil District, Nashville, Davidson County, Tennessee, as shown on Plat of **OXTON HILL**, of record in Book **8250**, Page **611**, Register's Office for Davidson County, Tennessee.

The above described property is encumbered by easements for sanitary sewer lines, landscaping, drainage, public utilities, underground electric service, and private paved areas for ingress-egress easements for the use and benefit of the OXTON HILL TOWNHOUSE CORPORATION.



EXHIBIT "B"
TO DECLARATION

LEGAL DESCRIPTION OF
THE COMMON AREAS
OR COMMON ELEMENTS

BOOK 10154 PG 411

Being land located in the 25th Civil District, Nashville, Davidson County, Tennessee, as shown on Plat of **OXTON HILL**, of record in Book **8250**, Page **611**, Register's Office for Davidson County, Tennessee.

HOWEVER, there is specifically EXCLUDED AND EXCEPTED from the above described property all numbered and platted lots and public utility easements as shown in plat of said lots and public streets as shown in plat of **OXTON HILL**, a Planned Unit Development, of record in Plat Book **8250**, Page **611**, of the Register's Office for Davidson County, Tennessee, and to which plat reference is hereby made for more complete details as to location and description of said lot areas and public utilities and drainage easements.

The above described property is encumbered by easements for sanitary sewer lines, open space, detention area, landscaping, drainage, public utilities, underground electric service, and private paved areas for ingress-egress easements for the use and benefit of the OXTON HILL TOWNHOUSE CORPORATION.

EXHIBIT "C"
TO DECLARATION

BY-LAWS
OF
OXTON HILL TOWNHOUSE CORPORATION

BOOK 10154 PG 412

ARTICLE I

NAME AND LOCATION. The name of the corporation is **OXTON HILL** TOWNHOUSE CORPORATION , hereinafter referred to as the "Association". The principal office of the corporation shall be located at a place to be designated by the Board in its notice of meeting, but meetings of members and directors may be held at such places within the State of Tennessee, County of Davidson, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Reference is made to Article I of the Declaration to which these By-Laws are attached for "Definitions" which are incorporated herein by references.

ARTICLE III

MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 4:00 p.m. If

the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

BOOK 10154 PG 413

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-tenth (1/10) of all the votes of each class of membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, potage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence ta the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement

at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

Section 6. Voting. The aggregate number of votes for all members of the Association shall be qual to the number of Units which have been subject to this Association by Plat or amended Plat by the Developer, and each unit Owner shall be entitled to one vote per Unit owned. Each Unit Owner's respective percentage of ownership interests in the Common Elements shall be the result of a fraction, the numerator being the number of Units owned by that Unit Owner and the denominator being the number of Units subjected to this Association. If any Unit Owner consists of more than one person, the voting rights of such Unit Owner shall not be divided but shall be exercised as if the Unit Owner consisted of only one person in accordance with the proxy or other designation made by the persons constituting such Unit Owner. The Developer may exercise the voting with respect to Units owned by it.

No Unit Owner who is in default in the payment of his assessments hereunder shall be entitled to exercise his right to vote hereunder until he has cured such default. A Unit Owner shall be deemed to be in default if he has not paid his assessments to the Board, or their agent, within fifteen (15) days after receipt of notice of assessment. A Unit Owner may protest the amount of

the assessment, but it still must be paid during the pendency of the protest to the Board.

ARTICLE IV

BOARD OF DIRECTORS; SELECTION, TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of three (3) Directors, who need not be members of the Association. Any holder of first mortgages or deeds of trust on more than fifty (50%) percent of the Units may designate a fourth board member to serve. Such holder shall not be required to appoint such fourth board member and such fourth board member shall not be required to be a unit owner. Such holder shall receive actual notice of all board meetings at least two weeks prior to such meetings, addressed to such person and address as may be designated in writing from time to time by such holder.

Section 2. Term of Office. At the first annual meeting the members shall elect one (1) director for a term of one year, one (1) director for a term of two years and one (1) director for a term of three years; and at each annual meeting thereafter the members shall elect one (1) director for a term of three years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for is actual expenses incurred in the performance of his duties. BOOK 10154 PG 416

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nomination Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and to or more members of the Association. The Nominating committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announce at each annual meeting. The Nominating Committee shall take as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominees may be either members of non-members of the association.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI

MEETING OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to tie by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days' notice for each Director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AD DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

BOOK 10154 PG 418

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof; and, to enforce the Declaration and these By-Laws;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended if they involve other than payment of assessments after notice and hearing before the Board, for a period not to exceed sixty (60) days for infraction of the Declaration, the By-Laws or published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) establish, levy, assess and collect the assessments or charges as may be necessary;

(e) declare the office of a member to the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meeting of the Board of Directors; and

(f) appoint and remove at pleasure all officers, agents, and employees of the Corporation, prescribe their duties, fix their compensation, and require of them such bond as may be deemed necessary. Nothing contained in these By-Laws shall be construed to prohibit the employment of any member, officer, or Director of the Corporation in any capacity whatsoever.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to

present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-tenth (1/10) of all classes of members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in this Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained; and

(h) cause the exteriors of the dwellings to be maintained.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointment. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices

except in the case of special offices created pursuant to Section 4 of this Article. BOOK 10154 PG 423

Section 8. Duties. The duties of the officers are as follows:

President

The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President

The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board.

Secretary

The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all pages requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall preform such other duties as required by the Board.

Treasurer

The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association's books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX

COMMITTEES

The Board shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided by these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI

ASSESSMENTS

BOOK 10154 PG 425

Section 1. Obligation for Assessments. As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the then highest maximum effective rate of interest paid per annum and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Annual Budget. The estimated annual budget for each fiscal year shall be approved by the Board, and copies thereof shall be furnished by the Board to each Unit Owner, not later than thirty (30) days prior to the beginning of such year. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Unit Owner shall pay, as his respective monthly assessment for the common expenses, **one-eighth (1/8)** of his proportionate share of the common expenses for such year as shown by the annual budget. Such proportionate share for each Unit Owner shall be in accordance with his respective ownership interest in the Common Elements. The

Board may determine different allocations with respect to a part of such charges whenever it appears to the Board that such an allocation would be unfair. The allocations shall be applied uniformly to all Owners of like situations. The allocation of the Board shall be final and binding upon all parties. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new monthly assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay each month the amount of his respective monthly assessment as last determined.

Section 3. Partial Year or Month. For the first fiscal year, the annual budget shall be as approved by the First Board. If such first fiscal year, or any succeeding fiscal year, shall be less than a full year, then the monthly assessments for each Unit Owner shall be proportionate to the number of months and days in such period covered by such budget. Commencing with the date of occupancy of his Unit, each Unit Owner, shall pay his assessments for the following month or fraction of a month, which assessment shall be in proportion to his respective ownership interest in the Common Elements and the number of months and days remaining of the period covered by the current annual budget, and which assessment shall be as computed by the Board.

Section 4. Annual Report. Within forty-five (45) days after the end of each fiscal year covered by an annual budget, or as soon thereafter as shall be practicable, the Board shall cause to be furnished to each Unit Owner a statement for such year

so ended, showing the receipts and expenditures and such other information as the Board may deem desirable. BOOK 10154 PG 427

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

Section 6. Expenditures. Except for expenditures and contracts specifically authorized by the Declaration and By-Laws, the Board shall not approve any expenditure in excess of Two Thousand Five Hundred Dollars ($2,500.00) unless required for emergency repair, protection or operation of the Common Elements, nor enter into any contract for more than three (3) years without a ninety (90) day cancellation clause without the prior approval of two-thirds (2/3) of the total membership of the Association, and without securing consents of mortgagees, if necessary.

Section 7. Discharge of Liens. The Board may cause the Association to discharge any mechanic's lien or other encumbrance which in the opinion of the Board may constitute a lien against the Property or the Common Elements, rather than a lien against only a particular Unit Ownership. When less than all the

Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason of such lien.

BOOK 10154 PG 428

Section 8. Holding of Funds. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of al the Unit Owners in the percentages of the Unit Owners as from time to time existing.

ARTICLE XII

INDEMNIFICATION

Section 1. General. The Association shall indemnify and hold each of its directors and officers, each member of any committee appointed pursuant to the By-Laws of the Association, and the Board, against all contractual and other liabilities to others arising out of contracts made by or other acts of such directors, Board, officers or committee members, on behalf of the Unit Owners, or arising out of their status as directors, Board, officers or committee members, unless any such contract or act shall have been made in clear violation of the Declaration or these By-Laws, or fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include

indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director, officer, Board or committee member may be involved by virtue or such persons being or having been such director, officer, Board or committee member; provided, however, that such indemnity shall not be operative with respect to:

(a) any matter as to which such person shall have finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the perfcrmance of his duties as such director, officer, Board or committee member, or

(b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for criminal (i.e., a felony) acts, or clearly violating the Declaration or these By-Laws, or for gross negligence or fraud in the performance of his duties as such director, officer, Board or committee member.

Section 2. Success on Merits. To the extent that a member of the Board of Directors or an officer of the Association

or a member of any committee appointed pursuant to the By-Laws of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 3. Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case, upon receipt of an undertaking satisfactory to the Board by or on behalf of the person or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.

Section 4. Miscellaneous. The Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Article, provided, however, that the liability of any Unit Owner arising out of any contract made by or other acts for the directors, Board, officers or members of such committees, or out of the aforesaid indemnity in favor of the directors, Board, officers or members of such committees, shall be limited to such proportion of the total liability hereunder as said Unit Owner's percentage of interest in the Association bears to the total percentage interest of all the Unit Owners in the Association. Every agreement made by the Managing Agent on behalf

of the Unit Owners shall provide that the directors, Board, officers, members of such committees, or the Managing Agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as expressly set forth herein), and that such Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Association bears to the total percentage interest of all Unit Owners in the Association. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board of Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. Such right of indemnification shall continue as to a person or entity who has ceased to be a member of the Board of Directors, officer of the Association or a member of such committee, and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of such person or entity. In no event shall this indemnity exceed coverage occasioned by officers' and directors' liability insurance coverage, which the Association shall be required to carry and maintain, to the extent that the same is reasonably available in the marketplace.

ARTICLE XIII

AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the Board members, by a majority of Board members present in person or by proxy, except that the Veterans Administration shall have the right to veto amendments while phased development has not been completed.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XIV

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, I, being the Incorporator of **OXTON HILL TOWNHOUSE CORPORATION**, have hereunto set my hand as of this the 9th day of August, 1996.

Dudley Warner, Incorporator

CERTIFICATION

I, the undersigned, do hereby certify: BOOK 10154 PG 433

That I am the duly elected and acting secretary of the OXTON HILL TOWNHOUSE CORPORATION, a Tennessee corporation, and,

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Incorporator thereof, held on the 9th day of August, 1996.

IN WITNESS WHEREOF, I have hereunto subscribed my name as of this 9th day of August, 1996.

Beth Warner

Beth Warner, Acting Secretary

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

BOOK 10154 PG 434

Personally appeared before me, the undersigned a Notary Public in and for said County and State, Dudley Warner and wife, Beth Warner, the within named bargainors, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon their several oaths, acknowledged that they executed the foregoing instrument for the purposes therein contained.

Witness my hand and seal at office, this 12th day of August, 1996.

Mary Ann Johnson
Notary Public

My Commission Expires: 5/24/97

MARY ANN JOHNSON NOTARY PUBLIC

02113889
IDENTIF. & REFERENCE

96 AUG 13 AM 8:30
FELIX Z. WILSON II REGISTER
DAVIDSON COUNTY, TN.

PICK-UP

6331 08/13 0101 03CHECK 240.00