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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE TOWNHOMES OF TRUXTON VILLAGE

A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE TOWNHOMES OF TRUXTON VILLAGE (the "Declaration"), made, published and declared as of this 25th day of October, 2006, by and between E. Phillips Development, L.L.C. (the "Developer"), and any and all persons, firms, or corporations presently owning or hereafter acquiring any of the within described property;

W I T N E S S E T H:

WHEREAS, the Developer is the owner of certain real property located in the County of Davidson, State of Tennessee, and described on **Exhibit "A"** and depicted on **Exhibit "A-1"** attached hereto (the "Parcel"); and

WHEREAS, the Developer intends to and does hereby submit the above-described Parcel of real estate together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging to, or in any way pertaining thereto, (the "Property") to the provisions of the Tennessee Horizontal Property Act, Tenn. Code Ann. § 66-27-101 et seq., for the express purpose of establishing thereon a horizontal property regime with private elements to be known as The Townhomes of Truxton Village; and

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

NOW, THEREFORE, the Developer declares as follows:

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

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

(b) **"Additional Property"** means all real property which is contiguous to the real property described in Exhibit A hereto and subject to annexation to the terms of this Declaration in accordance with the provisions hereof.

(c) **"Association"** means The Townhomes of Truxton Village Homeowners Association, Inc., a Tennessee not-for-profit corporation.

(d) **"Board"** means the Board of Directors of the Association.

(e) **"Building"** or **"Buildings"** means the buildings located on the Parcel and forming part of the Property and containing the Units. The "Building" or "Buildings" are and shall be delineated on Exhibit A-1 and on a comparable exhibit to any Supplementary Declaration annexing Additional Property as provided hereunder.

(f) **"Bylaws"** means the Bylaws of the Association. For purposes of the Act, all provisions contained in this Declaration dealing with the administration and maintenance of the Property shall be deemed to be a part of the Bylaws. A copy of the Bylaws is attached to this Declaration as Exhibit "B."

(g) **"Common Elements"** means all real and personal property within the Property other than the Units (which include the Private Elements within the Units) which is now or hereafter owned by the Association. The Common Elements are designated on Exhibit A-1 (and on a similar exhibit to any Supplementary Declaration hereto) and shall be held by the Association for the common use and enjoyment of the Unit Owners. The Common Elements shall include, but shall not be limited to lawns (other than those within Private Elements), streets, roadways, bridges, culverts, parking areas, drainage structures and facilities, private sanitary sewers, ponds, waterways, fences, sidewalks, curbs, gutters, signs, lights, utilities and other improvements. Developer shall convey title to the Common Elements to the Association.

(h) **"Declaration"** means this instrument, as amended or supplemented from time to time.

(i) **"Developer"** means E. Phillips Development, L.L.C., its successors and assigns, provided such successors or assigns are designated in

writing by Developer as a successor or assign of the rights of Developer set forth herein.

(j) **"Limited Common Elements"** means any Common Elements contiguous to and serving a single Unit or a certain number of Units to the exclusion of other Units (including without limitation, patios), as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful Occupants of such Unit or Units either in this Declaration, on Exhibit A-1 or by a similar exhibit to a Supplementary Declaration hereto.

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

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

(m) **"Parcel"** means the parcel or tract of real estate described on **Exhibit "A"** and depicted on **Exhibit "A-1"** attached to this Declaration.

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

(o) **"Private Elements"** means the lot area upon which each Unit is located and the improvements now or hereafter located thereon as shown on Exhibit A-1 or on a similar exhibit to a Supplementary Declaration hereto. A Unit Owner's ownership of a Unit shall include fee simple ownership and use of the Private Elements for such Unit. References to Lots in this Declaration or on Exhibit A-1 (or on an exhibit to a Supplementary Declaration hereto) shall be deemed to refer to the Private Elements.

(p) **"Property"** means all the land and space comprising the Parcel, the Additional Property as herein defined, and all improvements and structures thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.

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

(r) **"Supplementary Declaration"** means an instrument filed with the Register's Office of Davidson County, Tennessee which subjects any Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

(s) **"Unit"** means a portion of the Property as shown and designated in Exhibit A-1 (or on an exhibit to any Supplementary Declaration) for separate ownership and shall include the Private Elements and the residence and improvements now and hereafter located thereon. The Units of the first phase are identified by number on Exhibit A-1 and may be held and conveyed by reference to such number. Conveyance of a Unit shall automatically convey the undivided membership of each Unit Owner in the Association. Any Unit may be jointly or commonly owned in any estate recognized under applicable law. Units shall contain a minimum of 1,400 square feet of living area and have no less than a one car attached garage. All Units shall have a minimum of 2 bedrooms with a minimum of one bedroom and one bath on the lower level.

(t) **"Unit Owner"** means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit. Unless specifically provided otherwise herein, the Developer shall be deemed a Unit Owner so long as the Developer is the title holder of any Unit.

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

(b) Annexation of Additional Property. Without further assent or permit, Developer and any Successor Developer hereby reserves the right, exercisable from time to time but not later than ten (10) years after the date hereof, or the date of any Supplementary Declaration hereto, to subject to these restrictions Additional Property, in one or more additional phases, in order to extend the scheme of this Declaration and to bring such Additional Property within the jurisdiction of the Association.

(c) **Supplementary Declarations.** The additions herein authorized shall be made by filing of record with the Register's Office for Davidson County, Tennessee one or more Supplementary Declarations which shall extend the jurisdiction of the Association to the Additional Property described in said Supplementary Declarations, and thereby subject such Additional Property to assessment for its just share of the Association's expenses. Each Supplementary Declaration must subject the annexed property to the covenants, conditions and restrictions contained herein.

(d) **Consent to Rezoning**. Every Unit Owner shall be deemed to have consented to any rezoning that may be necessary or desirable for the development of Additional Property as part of The Townhomes of Truxton Village. Unit Owners within the Additional Property shall succeed to all of the rights and obligations of membership in the Association.

(e) Extension of Development Rights to Adjacent Property. The Developer shall have the rights described in this paragraph 2, exercisable without approval of the Association or any other person or entity. The Developer shall have the voting rights as specified hereinafter with respect to any added Units, subject to the original limitations as to duration of weighted voting.

(f) Association Rights. The Association may not assert as a reason to object to the new development plan the fact that existing Association facilities will be additionally burdened by the property to be added by the new development or that the type of home or size of Unit in any future construction differs from that of the initial construction phase, or any subsequent phase, it being acknowledged that the Developer intends to build townhomes within The Townhomes of Truxton Village. The Developer reserves the right to modify any preliminary plan to reconfigure Units, create additional amenities areas or Common Areas, prior to the sale of any Unit in an additional phase and thereafter within a phase with the consent of the Unit Owners of that phase only.

(g) HUD/VA Approval. If so required by applicable and effective federal law or regulations, annexation of Additional Property as part of the Property and/or subjecting Additional Property to the terms of this Declaration shall require prior HUD/VA approval so long as a Class B membership exists.

3. Exhibit A-1. Exhibit A-1 sets forth the numbers, areas, locations, and other data required by the Act.

4. Units. The legal description of each Unit shall consist of the identifying number of such Unit as shown on Exhibit A-1 (and on any similar exhibit to a Supplementary Declaration). Every deed, lease, mortgage, deed of trust or other instrument shall legally describe a Unit by its identifying number as shown on Exhibit A-1, and every such description shall be deemed good and sufficient for all purposes, as provided in the Act. Except as provided by the Act, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause such Owner's Unit to be separated into any tracts or parcels different from the whole Unit as shown on Exhibit A-1.

5. (a) Association of Unit Owners and Administration and Operation of the Property. There has been or will be formed an Association having the name The Townhomes of Truxton Village Homeowners Association, Inc., a Tennessee not-for-profit corporation, which Association shall be the governing body for all of the Unit Owners and shall be operated to provide for the maintenance, repair, replacement, administration, operation and care of the Property as provided in the Act, this Declaration and the Bylaws. The Unit Owners shall each be members of the Association, with each Unit holding an undivided membership interest in the Association which shall be appurtenant to such Unit, each such membership interest appurtenant to a Unit being in an equal share, subject to the provisions concerning voting hereinafter set forth. The Board of Directors of the Association shall be elected and shall serve in accordance with the provisions of the Bylaws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time as the Board deems advisable. The Association

shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the use and benefit of Unit Owners in accordance with the provisions of the Act, this Declaration and the Bylaws. Each Unit Owner shall be a member of the Association so long as such Owner is a Unit Owner. A Unit Owner's membership shall automatically terminate when such owner ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall automatically succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be divided among the respective Unit Owners with one (1) vote granted to each Unit (except that the Developer shall have three votes per Unit as provided in Section 5(b) below).

(b) Voting Membership.

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

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

(i) when one hundred percent (100%) of the Units have been conveyed to Unit Owners;

(ii) by January 1, 2010; or

(iii) when, in its discretion, the Developer so determines.

(c) Management of Property. The Board shall have the authority to engage the services of an agent (herein sometimes referred to as the "Managing Agent") to maintain, repair, replace, administer and operate the Property, or any part thereof, to the extent deemed advisable by the Board, subject to the provisions of subsection (d) below. The Board shall require that such Managing Agent have fidelity bond coverage on its employees handling Association funds. The cost of such services shall be a common expense, as defined below. Any vote of the Board to adopt any form of management of the Property without the services of a professional property management company shall be subject to the prior approval of a majority of all first mortgagees of Units.

(d) Initial Management Contract. The first Board, appointed as provided herein, shall ratify and approve the Management Agreement between the Developer, on behalf of the Association, and a management company, to act as Managing Agent for the Property, for a term as approved by said first Board.

(e) **Use by Developer**. During the period of sale by the Developer (and/or any builder(s)) of any Units, the Developer (and/or any builder(s)), and their agents, employees, contractors and subcontractors, and their respective agents and employees, shall have easements for access, ingress to and egress from the Buildings and Property as may be required for purposes of construction and sale of the Units and for the development of the Common Elements and work to be performed thereon. While the Developer (and/or any builder(s)) owns any of the Units and until each Unit sold by it is occupied by the purchasers, the Developer (and/or any builder(s)) and its employees may use and show one or more of such unsold or unoccupied Units as a model Unit or Units, or as a sales office, and may maintain customary signs in connection therewith.

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

(g) **Interest of Association in Common Elements**. Ownership of the Common Elements shall be vested in the Association pursuant to a conveyance of said Common Elements from the Developer to the Association.

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

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

8. **Use of the Common Elements**. Except as hereinafter set forth, each Unit Owner shall have the right to use the Common Elements (except the Private Elements) in common with all other Unit Owners, and shall have easements for the purposes of access, ingress to, egress

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

9. **Storage Areas and Parking Spaces**. Any storage areas on the Property, except those inside the Units and those which are Private Elements, shall be used by such Unit Owners in such manner and subject to such rules and regulations as the Board may prescribe. Parking spaces within the Properties, shall be used by such Unit Owners in such manner and subject to such rules and regulations as the Board may prescribe.

10. **(a) Common Expenses**. The Association shall be responsible for the "Common Expenses" as defined herein. Each Unit Owner shall be assessed an equal share of the Common Expenses as described below. Common Expenses shall consist of the following:

(i) the cost of administration of the Association, and the administration, repair, maintenance, replacement and operation of the Common Elements (including the Limited Common Elements); and

(ii) the cost of necessary maintenance, care, replacement of the following portions of the Buildings and the Units, including the Private Elements thereof: the exterior landscaping, walkways, porches, located upon or about each Unit, with the exception of elevated decks or balconies (the Association may contract with the Unit Owner of any Unit for the maintenance of such elevated decks, balconies and for the maintenance of such other areas as the Board deems appropriate), painting, maintenance, and nonstructural repair of exterior building surfaces as the Board shall deem necessary and proper, including roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, replacement of trim, caulking and other repairs to roof covers (to include the repair and replacement of all non-structural components of the roof of each Unit) and other miscellaneous repairs of a non-structural nature. Such exterior maintenance shall not include glass surfaces of any nature. The balance of the Units and the improvements located thereon shall be maintained by the Unit Owner of each particular Unit. In the event that a Unit Owner fails to satisfy his

maintenance obligations as herein defined, the Association may, after approval by two-thirds vote of the Board, enter onto said Unit and perform such necessary maintenance, repair or replacement, the cost of such work to be added to and become a part of the assessment to which said Unit is subject.

(iii) any other expenses determined by the Board to be Common Expenses.

(b) Lien of Assessment. In order to secure payment of assessments, both monthly or annual and special, as the same become due, there shall arise a continuing lien and charge against each Unit, the amount of which shall include interest at the maximum effective rate allowed by law, costs, and reasonable attorney's fees to the extent permissible by law. Each such assessment, together with such interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Unit Owner of the Unit at the time the assessment became due; provided that this personal obligation shall not pass to successors in title unless expressly assumed by them. The lien provided for herein, however, shall be subordinate to the lien of any first deed of trust (sometimes hereinafter called "mortgage") on any Unit. The sale or transfer of any Unit shall not affect any assessment lien. The sale or transfer of any Unit that is subject to any first mortgage, pursuant to a foreclosure thereof or under power of sale or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessment, but not the personal obligation of any former title holder, as to payments that became due prior to such sale or transfer and subsequent to the recordation of the first mortgage that has been foreclosed, but the Association shall have a lien upon the proceeds from foreclosure or of sale junior only to the lien of the foreclosed first mortgage. No sale or transfer shall relieve such Unit from liability for any assessment thereafter becoming due or from the lien thereof.

(c) Levy of Assessments. The Board shall fix the commencement date for monthly or annual assessments on the first day of the month following the conveyance of the first Unit to an Unit Owner and shall provide for a partial assessment between the commencement date and the end of the calendar year next following. Thereafter, monthly or annual assessments shall be levied by the Board, by action taken on or before December 1 of each year for the ensuing year. The Board, in its discretion, may provide for the periodic payment of such assessments at some intervals other than monthly. Special assessments may be levied in any year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements or such other portion of the Property for which the Association is obligated to maintain and repair, if any, including fixtures and personal property related thereto; provided that the same are first approved by the Board of Directors of the Association, recommended to the membership, and subsequently approved by affirmative vote of Members entitled to cast at least two-thirds (2/3) of the votes at a meeting of the Members duly held for that purpose. Written notice of the monthly, annual or special assessment shall be mailed (by U.S. first class mail) to every Unit Owner subject thereto. 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 a specified Unit have been paid and the amount of any delinquencies. The Association shall not be

required to obtain a request for such certificate signed by the Unit Owner, but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting the same.

(d) Maximum Annual Assessment. Until otherwise established by the Board as set forth herein, the maximum annual assessment shall be One Thousand Two Hundred Dollars and no/100 ($1,200.00) per year per Unit with a twenty-five percent (25%) initial charge. The twenty-five percent (25%) initial charges may be used for capital improvements and other maintenance obligations of the Association or the Developer, including without limitations the obligations described in paragraph 15 hereof. The purchaser of any Unit shall pay at closing (i) one-sixth (1/6) of the annual assessment for such Unit plus (ii) one-twelfth (1/12) of the annual assessment prorated in accordance with the number of days remaining in the calendar month of purchase. The purchaser of such Unit shall commence monthly payments of one-twelfth (1/12) the annual assessment in the third full month following closing. The Association at its option may allow the payment of the annual assessment on a monthly or quarterly basis. From and after one year from the date hereof, the maximum annual assessment may be increased each year by an amount up to, but not in excess of ten percent (10%) of the maximum annual assessment for the previous year without a vote of the membership. In the event the Board of Directors determines that an increase in excess of such amount is required, the amount of assessment exceeding such limitation shall be automatically effective thirty (30) days after the Association sends written notice to each Unit Owner of the amount and necessity of such increased assessment unless the Association receives written objection to such increased assessment by Members entitled to cast more than fifty percent (50%) of the percentage values of the votes eligible to be cast by Members of the Association within such thirty (30) day period or a special meeting of Members is called within such thirty (30) day period and the excess assessment is disapproved by a like vote of the Members at such meeting.

(e) Rate of Assessment. All Units in the development shall commence to bear their assessments simultaneously, except that Units owned by the Developer do not accrue liability for assessments of any nature while owned by the Developer.

(f) Effect of Non-Payment of Assessments and Remedies of the Association. In addition to any other remedy available to the Association under this Declaration or applicable law, any assessment not paid within thirty (30) days after the due date shall be subject to a monthly late fee equal to the greater of ten dollars ($10.00) or ten percent (10%) of the outstanding balance owed. Unpaid assessments shall also bear interest from the due date at the maximum rate allowed by law. The Association, its agent or representative, may bring an action at law against the Unit Owner personally obligated to pay the same or foreclose the lien against the Unit to which the assessment relates, and interest, costs, and reasonable attorney's fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. No Unit Owner may avoid liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Unit.

(g) Mortgage and Deed of Trust Protection. The lien for common expenses

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

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

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

13. Insurance. The Board shall have the authority to and shall obtain insurance for the Property, including the Units and Private Elements, and the Common Elements, exclusive of the additions within, improvements to and decorating of the Units by the Unit Owners, against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements and the Units, and against such other hazards and for such amounts as the Board may deem advisable. Such insurance shall, if possible, include all or any portion of all Limited Common Elements. Insurable replacement cost shall be deemed to be the cost of restoring the Common Elements, Units or any part thereof to substantially the same condition as constructed by Developer. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Board of the Association, as the trustee for each of the Unit Owners in direct ratio to said Unit Owner's respective percentage of ownership in the Association, as set forth in the Declaration, and for the holders of mortgages and deeds of trust on his Unit, if any. The policy of insurance shall also contain, if possible, (1) a waiver of subrogation rights by the insurer against individual Unit Owners, (2) an inflation guard endorsement, (3) a building ordinance endorsement and (4) (i) a guaranteed replacement cost endorsement or (ii) a replacement cost endorsement and, where available an agreed amount endorsement. The premiums for such insurance and funds to cover deductible amounts shall be a Common Expense. Liability insurance limits for the Common Elements shall be a minimum of $1,000,000.00 per occurrence.

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

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

The Board shall also have authority to and shall obtain comprehensive public liability insurance, in such amounts as it deems desirable, and worker's compensation insurance and other liability insurance as it deems desirable, insuring each Unit Owner, mortgagees of record, if any, the Association, its officers, directors, Board and employees, the Developer, and the Managing Agent, if any, from liability in connection with the Common Elements. The premiums and funds to cover deductibles for such insurance shall be Common Expenses. Board shall retain in safekeeping any such public liability policy for six (6) years after the expiration date of the policy.

The Board shall also have authority to and may obtain such insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Property and each member of the Board and officers of the Association, and members of any

committee appointed pursuant to the Bylaws of the Association from liability arising from the fact that said person is or was director or officer of the Association, or a member of such a committee.

Each Unit Owner shall be responsible for obtaining his own insurance on the contents of such Unit Owner's Unit, as well as additions and improvements thereto, decorations, furnishings and personal property therein, and personal property stored elsewhere on the Property. In addition, in the event a Unit Owner desires to insure against such Unit Owner's personal liability and loss or damage by fire or other hazards above and beyond the extent that such Unit Owner's liability, loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Board for all of the Unit Owners as part of the common expenses, as above provided, said Unit Owner may, at such Unit Owners option and expense, obtain additional insurance. To the extent that insurance coverage purchased by an individual Unit Owner is coextensive with insurance coverage purchased by the Association, the Association's insurance policy shall be primary.

14. Maintenance, Repairs and Replacements.

(a) Obligations of Unit Owners. Each Unit Owner, at such Owner's expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within the interior of such Owner's Unit, including plumbing, pipes, wiring, appliances, and structural components of the Unit. In addition each Unit Owner shall be responsible for all exterior glass, windows, including storm windows, screens, and doors, including storm doors, and all portions of the Unit for which the Association is not responsible. All structural repairs to Units are the financial responsibility of the Unit Owners. Notwithstanding any other provision contained in this paragraph 14 or elsewhere in this Declaration, the Unit Owner shall be responsible for the repair and maintenance of the air conditioning condenser serving his or her Unit.

(b) Obligations of Association. The Association shall be responsible for maintenance of, repairs to and replacements within the Common Elements (including Limited Common Elements) and the Parcel, including landscaping and yard maintenance, and including the items specified in paragraph 10(a)(iii) above, and on the Units and Private Elements the Association shall be responsible for fences and exterior landscaping to the extent installed by the Developer or the Association, walkways, porches, painting and non-structural maintenance and repair of roofs, gutters, down-spouts, exterior trim, exterior caulking and other exterior repairs of a non-structural nature, provided that such exterior maintenance responsibilities shall not include glass, windows, including storm windows, screens and doors, including storm doors, which shall be the responsibility of the Unit Owner. Other items of maintenance, repair, and replacement in the Units shall be the responsibility of the Unit Owner. The cost of maintenance of, repairs to and replacements, which are the responsibility of the Association, shall be part of the Common Expenses, subject to the terms of this Declaration, the Bylaws, rules and regulations of the Association.

(c) Loss Attributable to Unit Owner. Notwithstanding any provision of this

Declaration to the contrary, if the need for maintenance or repair that would otherwise result in a Common Expense that was the obligation of the Association is caused by the willful or negligent conduct or act of a Unit Owner, his household pet, family, guest, invitees, or other Person using or occupying said Unit Owner's Unit with express or implied permission, the cost of such repair or maintenance shall be assessed against such Unit Owner and shall be due and payable thirty (30) days from the date of notice thereof, such assessment to be collected and enforced as provided in this Declaration for the collection of assessments. Such assessment shall not require approval of any of the Members; provided, however, that a Unit Owner against whose Unit such an assessment is levied shall be entitled to ten (10) days' notice, a hearing before the Board and a reasonable opportunity to perform the necessary maintenance or repair work prior to being levied with such an assessment.

(d) Access to Units. The authorized representative of the Association, Board or of the Managing Agent with approval of the Board shall be entitled to reasonable access to the individual Units and Private Elements as may be required in connection with the preservation of any individual Unit or Private Elements in the event of an emergency, or in connection with maintenance of, repairs or replacements within the Common Elements, Private Elements or any equipment, facilities or fixtures affecting or serving the other Units, Common Elements or Private Elements or to make any alteration required by any governmental authority. Such employees or agents are further authorized to enter upon any Unit and the Private Elements thereof without notice to the Unit Owner when, in the judgment of the Board, such entrance is necessary to prevent damage to such Unit or surrounding Units by fire, criminal act, natural disaster or other emergency.

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

The following provisions shall apply to all party walls constructed in the Property: (i) The cost of reasonable repair and maintenance of a party wall shall be shared by the Unit Owners who make use of the wall in proportion to such use; (ii) If a party wall is destroyed or damaged by fire or other casualty, any Unit Owner who has used the wall may restore it. If other Unit Owners make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; subject, however, to the right of any Unit Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions; (iii) The Unit Owner may construct or reconstruct a party wall subject to and within the limitations of architectural control and other limitations of this Declaration with the right to go upon the adjoining Lot to the extent reasonably necessary to perform the construction. The construction shall be done expeditiously. Upon completion of the construction, the Unit Owner shall restore, as is reasonably practicable, the adjoining Unit to as near the same condition which prevailed on or before the commencement of the construction; (iv) The right of

any Unit Owner to contribution from any other Unit Owner under this Section shall be appurtenant to the land and shall pass to the Unit Owner's successors in title; (v) If any Unit Owner desires to sell his Unit, he may, in order to assure a prospective purchaser that no adjoining Unit Owner(s) has a right of contribution as provided in this Article, request that the adjoining Unit Owner(s) provide a certification that no right of contribution exists. It shall be the duty of each adjoining Unit Owner to make a certification as to whether there is any pending claim of contribution immediately upon request and without charge.

15. Shared Amenities and Maintenance with Existing Truxton Park Community.

(a) Background. The Townhomes of Truxton Village are adjacent to the residential real estate development known as "Truxton Park," which consists of free-standing single family homes. The close proximity of these two communities makes it desirable for them to share in the use and maintenance of certain amenities within the boundaries of Truxton Park. In recognition of this fact, Developer has contributed Fifteen Thousand Dollars and no/100 ($15,000.00) toward the construction of a playground and recreation area within the Truxton Park common area located adjacent to Windsor Chase Way.

(b) Maintenance Fund. The Association and Truxton Park Homeowners Association, Inc. ("TPHOA") shall establish a joint maintenance fund for the purpose of maintaining the Andrew Jackson Parkway entrance area to the two communities and a recreation area (including a playground) that will be available for use by residents of both communities. Said entrance area, the playground and recreation area shall hereinafter be collectively referred to as the "Joint Maintenance Obligations." The joint maintenance fund will be managed by TPHOA or the management company for TPHOA. Upon reasonable notice and at a reasonable time, the Association shall be entitled to review all records relating to the joint maintenance fund and the use of monies from the joint maintenance fund.

TPHOA and the Association shall each make an annual contribution to the joint maintenance fund in amounts proportionate to the total number of dwelling units within the respective communities. Within the fund shall be created a reserve balance to be used for replacement of equipment as needed. The initial reserve balance shall be one-third (1/3) the cost of the original cost of construction of the playground or Five Thousand Dollars and no/100 ($5,000.00). The reserve balance may be adjusted as necessary to account for inflation.

Upon the initial sale of each Unit within the Townhomes of Truxton Village, the Developer and the TPHOA shall each contribute $43.11 per unit to the joint maintenance fund. After all Units have been sold by the Developer, TPHOA shall contribute $4,828.32, as the balance of its initial contribution to the reserve balance.

(c) Maintenance, Committee Oversight. Maintenance of the Joint Maintenance Obligations shall be performed and/or directed by the TPHOA or its property manager. The Association and the TPHOA shall establish a committee to oversee the joint maintenance fund and performance of the Joint Maintenance Obligations consisting of two members appointed by the Board of Directors of the TPHOA and one member appointed by the Board of Directors of the Association. The committee shall review contracts and otherwise oversee the operation and maintenance of the Joint Maintenance Obligations. Such maintenance shall include without limitation lawn care, playground maintenance, seasonal decorations at the Andrew Jackson Parkway entrance, and joint activities for residents of both communities. The committee shall also formulate rules and regulations for the use of the playground and recreation area.

(d) Access. All residents of Truxton Park and the Townhomes of Truxton Village shall have rights of use and access for the playground and recreation area within the Joint Maintenance Obligations. In order to memorialize said right of use and access by residents of the Townhomes of Truxton Village, the TPHOA and the Association shall execute an Easement and Maintenance Agreement that shall be recorded with the Register's Office of Davidson County, Tennessee.

16. Architectural Control, Alterations, Additions or Improvements.

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

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

part thereof, resulting from such alterations, additions or improvements.

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

18. Encroachments and Easements. If any portions of the Common Elements shall actually encroach upon any Unit or Private Elements, or if any Unit or Private Elements shall actually encroach upon any portions of the Common Elements, or if any Unit or Private Elements shall actually encroach upon another Unit or Private Elements, as the Common Elements, Units and Private Elements are shown by Exhibit A-1, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved, to the extent of such encroachments, so long as the same shall exist.

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

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

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

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

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

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

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

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

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

Developer, the Association, the Architectural Control Committee and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. In the event that the Architectural Control Committee fails to indicate its approval or disapproval within sixty (60) days after the receipt of the required documents, approval will not be required and the related covenants set out herein shall be deemed to have been fully satisfied. Approval or disapproval by the Architectural Control Committee shall not be deemed to constitute any warranty or representation by it including, without limitation, any warranty

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

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

(b) Structural Compliance. All structures shall be built in substantial compliance with the plans and specifications therefor, approved by Developer or the Association as provided in this section 20.

(c) Improvements and Setback Restrictions. No building or structure, or any part thereof, shall be located on any Unit so that the improvements exceed the boundaries of the Unit. No encroachment upon any utility easement reserved on Exhibit A-1 shall be authorized or permitted.

(d) Re-subdivision or Re-combination of Units. No Unit shall be re-subdivided or recombined, nor shall any building be erected or placed on any such re-subdivided Unit, unless such re-subdivision is approved by the Association, as well as any governmental authority having jurisdiction. Developer, however, shall have the right, but not the obligation, to re-subdivide into Units, by recorded plat or in any other lawful manner, all or any part of the Properties contained within the outer boundaries of Exhibit A-1, and such Units, as re-platted, shall be subject to this Declaration as if such Units were originally included herein. Any such re-plat must comply with pertinent re-platting ordinances, statutes, regulations, and requirements.

(e) Walls, Fences and Hedges. All walls, fences or hedges shall be erected or maintained only as approved and directed by the Architectural Control Committee. There shall be permanent six-inch (6'') easements on both sides of any property lines separating the Units for the purpose of construction and maintenance of a fence between the patios appurtenant to said Units (the "Fence Easements"). Maintenance and repair of any fence constructed within a Fence Easement shall be the responsibility of the Unit Owner on whose property the fence is located. Any fence constructed within a Fence Easement (other than be the Developer) must be approved by the Architectural Control Committee in accordance with the provisions of Section 20(a).

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

(g) Parking. Because of limited parking within the Property, the Owners and/or Occupants of any Unit may not park more than two (2) vehicles per Unit within the Property at any time, and such vehicles shall be parked either in the garage appurtenant to said Unit or the driveway serving said Unit. Except as provided in this section, inoperative vehicles, tractors, buses, mobile homes, recreational vehicles, trailers (either with or without wheels), travel trailers, campers, camper trailers, boats and other watercraft, and boat trailers are prohibited. Commercial vehicles are permitted within the Property only for such periods as are reasonably necessary for loading and unloading, providing delivery service or as needed for construction or reconstruction work within the Property. The Board of Directors may impose rules and regulations not inconsistent with this Declaration with respect to the maintenance and use of parking spaces provided on the Common Elements and the uses, operating and control of vehicles thereon. The vehicles of Developer and of any builder working under a contract with Developer for the construction of a residence within the Property are exempt from this provision.

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

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

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

(k) Clothes Lines. Outside clotheslines shall not be permitted.

(l) Signs and Advertisements. No sign, advertisement, billboard or advertising structure of any kind shall be erected upon or displayed or otherwise exposed to view on any Unit or any improvement thereon; provided that this requirement shall not preclude the placement by Unit Owners of "For Sale" signs in the front of individual residences of such size, character, and number as shall from time to time be approved by the Architectural Control Committee. The Architectural Control Committee shall have the right to remove any such unapproved sign, advertisement, billboard or structure that is placed on said Units, and in doing so shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal. The Developer and any builder working under contract with Developer for the construction of a residence within the Property shall not be subject to this provision.

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

(n) Outside Lighting. Outside lights at eaves and door entrances shall be permitted, but no exterior flashing or high-intensity lights, floodlights, or spotlights on the exterior of any building shall be permitted, except with the prior written approval of the Architectural Control Committee. The Developer shall not be subject to this provision.

(o) Satellite Dishes and Antennae. Unless otherwise approved by Developers or the Architectural Control Committee, all television antennae, satellite dishes, dishes which receive video programming services via multipoint distribution services and any other device used for the reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution (wireless cable) services must be one (1) meter or less in diameter, must be located to the rear of a Unit and not visible from the street (unless such location would preclude reception of an acceptable

quality signal) and may not be affixed to any portion of the Common Elements.

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

(q) Recreational Equipment. Except for common recreational equipment that may be constructed and maintained by the Developer or the Association on the Common Elements for the use and enjoyment of all residents of the Townhomes of Truxton Village, no playground or recreational equipment may be erected, placed, or maintained on the Units or elsewhere within the Property.

(r) Oil and Mining Operations. No oil drilling, oil development operations, oil refining quarrying or mining operations shall be permitted on any Unit, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Unit. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Unit.

(s) Maintenance. All Units shall be maintained in a neat and attractive condition by their respective Unit Owners or Occupants. No Unit shall be used for storage of material and equipment, except for normal residential requirements or incident to construction of improvements thereon as herein permitted. The accumulation of garbage, trash or rubbish of any kind and the burning (except as permitted by law) of any such materials is prohibited. In the event of default on the part of the Unit Owner or Occupant of any Unit in observing the above requirements or any of them, such default continuing after ten (10) days' written notice thereof, the Association may, subject to approval of its Board of Directors, enter upon said Unit, repair, maintain and restore the same, and remove or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions and to place said Unit in a neat, attractive, healthful and sanitary condition. In so doing, the Association shall not be subject to any liability for trespass or otherwise. All costs incurred in any such repair, maintenance, restoration or removal shall be charged against the Owner of such Unit as the personal obligation or such Owner and as a lien upon the Unit, enforceable and collectible in the same manner and to the same extent as a maintenance assessment. Any Occupant of such Unit shall be jointly and severally liable with the Unit Owner for the payment of such costs.

(t) Landscape Maintenance. The Association shall contract with one (1) or more landscaping services to provide grass cutting, lawn maintenance, proper care for all trees, shrubbery and other landscaping, and other necessary maintenance services for the Common Elements and other portions of the Property for which the Association is responsible, provision for which shall be made in the monthly or annual assessments.

(u) Use of Premises. Each Unit shown on Exhibit A-1 shall be used only for private, single-family residential purposes and not otherwise. Notwithstanding the foregoing, Developer and any builder may maintain, as long as it owns the property in or

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

(v) **Animals and Pets**. No animals, livestock, or poultry of any kind shall be raised, bred, pastured, or maintained in any Unit or on any Common Element, except household pets such as small dogs and cats which may be kept thereon in reasonable numbers as pets for the sole pleasure of the Unit Owner or Occupant, but not for any commercial use or purpose.

(w) **Nuisances and Unsightly Materials**. No Unit or other structure on any Private Element shall be used for any business or commercial purpose. Each Unit Owner or Occupant shall refrain from any act or use of his Unit, which could reasonably cause embarrassment, discomfort, annoyance, or nuisance to others. No noxious, offensive, or illegal activity shall be carried on upon any Unit or Private Element. No motorcycle, motorbike, motor scooter, or any other unlicensed motorized vehicle shall be permitted to be operated on or in the Common Elements. No Unit or Private Element shall be used, in whole or in part, for the storage of rubbish of any character whatsoever; nor shall any substance, thing, or material be kept upon any Unit or Private Element which will emit foul or noxious odors or which will cause any noise that will or might disturb the peace and quiet of the Unit Owners or Occupants of surrounding Units or Private Elements.

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

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

(z) **Yard Art**. Statues, ornamental figures, ornamentation and any other yard art, regardless of size or color, may not be erected, placed or maintained on the Private Elements.

21. Remedies. In the event of any violation of the provisions of the Act, this Declaration, the Bylaws or the rules and regulations of the Board or Association by any Unit Owner (either by the Unit Owner's own conduct or by the conduct of any other Occupant of such Owners Unit) the Association, or its successors or assigns, or the Board, or its agent, and any Unit Owner(s) shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, the Bylaws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to sell the Unit through judicial process as provided hereinbefore, or for any combination of remedies, or for any other relief. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of ten (10%) percent per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of such Owner's respective share of the common expenses, and the Board shall have a lien for all of the same, as well as for nonpayment of the Unit Owner's respective share of the common expenses, upon the Unit and ownership interest in the Association of such defaulting Unit Owner and upon all of such Owner's additions and improvements thereto and upon all of such Owner's personal property in such Owners Unit or located elsewhere on the Property, provided, however, that such lien shall subordinate to the lien of a recorded mortgage or deed of trust on the interest of such Unit Owner, except for the amount of the proportionate share of said common expenses which become due and payable from and after the date on which the said mortgage or deed of trust owner or holder either takes possession of the Unit, accepts a conveyance of any interest therein (other than as a security) or files suit to foreclose its mortgage or deed of trust. In the event of any such default by any Unit Owner, the Board and the manager or Managing Agent, if so authorized by the Board, shall have the authority to correct such default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

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

an action for possession of such Unit in the manner provided by law.

In addition to the other remedies provided for herein, the Board may adopt a system of reasonable fines which may be imposed by the Board without approval of any Member for violations of the Declaration, the By-Laws and any rules and regulations of the Association including any architectural guidelines. All fines shall be deemed in the nature of assessments and collectible in the same manner allowed for collection of assessments hereunder.

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

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

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

Notwithstanding the above, the Developer shall have the unilateral right to make and record any necessary amendment to this instrument or the Bylaws for the express purpose of the correction of clerical errors or as may be required to obtain FHA/VA and/or FNMA approval for the development.

23. Notices. Notices provided for in the Act, Declaration or Bylaws shall be in writing, and shall be addressed if to a Unit Owner, to the address of such Owner's Unit, and if to the Association or Board, as the case may be, to the registered office, as set forth in Charter of the Association or to such other address as may be designated by the Association or Board from time to time, or at such other address as may be hereinafter provided. The Association or Board may

designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

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

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

25. Rights and Obligations. Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All present and future Unit Owners, tenants, Occupants and other persons who have a right to use any portion of the Common Elements shall be subject to and shall comply with the provisions of this Declaration and the Bylaws as they may be amended from time to time. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time an interest or estate in said land, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

The acceptance of a deed of conveyance, devise or of a lease to a Unit, the entering into occupancy of any Unit or the use of any portion of the Common Elements shall constitute an agreement that the provisions of this Declaration, the Bylaws and any rules and regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Unit Owner, tenant, Occupant or other person, 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 this Declaration, the Bylaws and the rules and regulations may be incorporated by reference in, and become part of, the agreement between any mortgagee and any present or future Unit Owner who enters into such an agreement with a mortgagee. When so incorporated, any default in the terms and conditions of the Declaration, Bylaws and rules and regulations may be considered as a default by the mortgagee, whereupon said mortgagee, after exercising its option to declare a default, shall then have all of the rights and

privileges arising as a result of a default under its agreement with said Unit Owner.

26. Trustee as Unit Owner. In the event title to any Unit is conveyed to a land title holding trust, under the terms of which all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder shall be considered Unit Owners for all purposes and they shall be responsible for payment of all obligations, liens, or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit. No claim shall be made against any such title holder trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of any such lien or obligation shall continue to be a charge or lien upon the Unit and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfer of title to such Unit

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

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

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

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

(c) The right of the Association to diminish in any way or to dedicate or transfer all or any part of the Common Elements to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the members entitled to vote thereon, provided that no such diminution, dedication or transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless the Developer (its successors or assigns) and members of the Association entitled to cast ninety percent (90%) of the total votes of members have been recorded, agreeing to such act, and further provided that so long as a Class B membership exists, if so required by applicable and effective federal law or regulations, dedication of the Common Elements must be

approved by HUD/VA; and

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

29. Provisions Relative to Mortgagee's Rights and to Federal Home Loan Mortgage. So long as required by the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA"), the following provisions shall apply in addition to and not in lieu of the foregoing (except in the case of a conflict in which case the following provisions shall apply):

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

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

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

(i) Change the percentage interests of ownership of all or any Unit or Unit Owners.

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

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

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

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

business hours and upon request.

(e) An adequate reserve fund for maintenance, repair, and replacement of Common Elements, which must be replaced on a periodic basis, will be established and funded by regular monthly payments rather than by special assessments. A working capital fund for the initial months of operation equal to twenty-five percent (25%) of the maximum annual assessment for each Unit must be established, collected and transferred to the Association at the time of closing of sale by the Developer of each Unit and maintained in an account for the use and benefit of the Association.

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

(g) No Unit Owner or any other party shall have priority over any rights of the first mortgagees of Units and/or Common Elements and the lien of any assessment is subordinate to the lien of any first mortgage on a Unit.

(h) Upon written request, the Association shall give to any mortgagee of a Unit, the FHLMC, FNMA, any lending institution servicing such mortgages as are acquired by the FHLMC or FNMA, or any insurer or guarantor of a mortgage or deed of trust on a Unit, timely notice in writing of any loss to or the taking of the Common Elements if such loss or taking exceeds $50,000.00, or of any other condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage, a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, or any proposed action that requires the consent of a specified percentage of mortgagees. The Association may rely upon the information contained in the book entitled "Deeds of Trust on Units" as must be established pursuant to the Bylaws, for a list of mortgagees to be notified hereby.

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

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

(l) The casualty and liability insurance and fidelity bond coverage required to be maintained by the Association shall meet the requirements specified in Part XII, Chapter 7 of the Fannie Mae Selling Guide.

(m) Notwithstanding any other provision of this Declaration to the contrary, annexation of additional properties, dedication of common elements and amendment of the Declaration shall require HUD/VA approval so long as a Class B membership exists.

IN WITNESS WHEREOF, the undersigned have executed this Declaration on this the 25th day of October, 2006

DEVELOPER

E. Phillips Development, L.L.C.

By: H Eddie Phillips
H. Eddie Phillips, Chief Manager

STATE OF TENNESSEE)
)ss:
COUNTY OF DAVIDSON)

Personally appeared before me, the undersigned, a Notary Public, H. Eddie Phillips, with whom I am personally acquainted, and who acknowledged that he executed the foregoing instrument for the purposes therein contained and who further acknowledged that he is Chief Manager of E. Phillips Development, L.L.C., a Tennessee limited liability company, and is authorized to execute this instrument on behalf of E. Phillips Development, L.L.C. as Chief Manager.

WITNESS my hand, at office this 25th day of Oct., **2006.**

MICHELLE L. PHILLIPS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Michelle L. Phillips
Notary Public

My Commission Expires: 3-21-2009

EXHIBIT A

Initial Property Subjected to the Terms of the Declaration

TRACT 1

Being a tract of land lying in Nashville, Davidson County, Tennessee and being more particularly described as follows;

Beginning at an iron rod set in the northerly right-of-way of Lebanon Pike (variable R.O.W.), said rod being the Southwest corner of Rare Hospitality International, Inc. As of record in instrument # 2004032332516, at the Register's Office for Davidson County, Tennessee, said rod also lying in the westerly boundary of the resubdivision of Tract #1, Lealand Bush Subdivision as of record in Book 5800, page 44, at the Register's Office for Davidson County, Tennessee and being the Southeast corner of this tract;

Thence with the northerly right-of way of Lebanon Pike as of record in Book 9987, page 252, at the Register's Office for Davidson County, Tennessee; along a curve to the right, with an arc length of 61.72', with a radius of 1857.86', with a chord bearing South 89 DEG. 01 MIN 56 SEC West, with a chord length of 61.71' to an iron rod set at a corner common with Heritage SPE LLC. As of record in instrument # 2000092896130, at the Register's Office for Davidson County, Tennessee. Said rod being the Southwest corner of this tract and being the easterly boundary of the final plat of Oakwood Commons as of record in Plat Book 6900, page 639, at the Register's Office for Davidson County, Tennessee;

Thence leaving the northerly right-of-way of Lebanon Pike with the common line of Heritage SPE LLC. And the boundary of Oakwood Commons, along a curve to the left, with an arc length of 7.83', with a radius of 25.00', with a chord bearing of North 07 DEG 54 MIN 09 SEC East, with a chord length of 7.80' to an existing iron rod;

Thence North 01 DEG 04 MIN 06 SEC West, 103.50' to an existing concrete monument;

Thence North 03 DEG 09 MIN 10 SEC East, 206.55' to an existing concrete monument;

Thence North 07 DEG 18 MIN 31 SEC east, 287.91' to an existing concrete monument;

Thence along a curve to the left, with an arc length of 355.74', with a radius of 290.8', with a chord bearing of N 27 DEG 42 MIN 01 SEC West, with a chord length of 333.94' to an existing railroad spike;

Thence North 87 DEG 07 MIN 15 SEC West, 556.00' to an existing iron rod at a corner common with Heritage SPE LLC. And Net Realty Holding Trust as of record in Book 7877, page 344 at the Register's Office for Davidson County, Tennessee;

Thence with the common line of Net Realty Holding Trust and with the boundary of Oakwood Commons, North 05 DEG 37 MIN 54 SEC East, 76.56', to an existing iron rod;

Thence North 87 DEG 29 MIN 48 SEC West, 238.77' to an existing iron rod;

Thence South 06 DEG 16 MIN 43 SEC West, 75.14' to an existing iron rod at a corner common with Net Realty Holding Trust and Heritage SPE LLC. As of record in instrument # 200092896130 at the Register's Office for Davidson County, Tennessee;

Thence with the common line of Hertiage SPE LLC. And the northerly boundary of Oakwood Commons, North 87 DEG 06 MIN 08 SEC West, 705.63' to an exiting concrete monument. Said monument lying in the easterly line of Andrew Jackson Properties, Ltd., as of record in Book 5876, page 203, at the Register's Office for Davidson County, Tennessee, also being known as Lot 1, Resubdivision of Lot 2, Jackson Square, Section 4 as of record in Book 5190, page 619 at the Register's Office for Davidson County, Tennessee;

Thence with the common line of Andrew Jackson Properties, Ltd. And the boundary of Jackson Square, North 01 DEG 42 MIN 33 SEC East, 332.92' to an existing iron rod at a corner common with Andrew Jackson Properties, Ltd. As of record in Book 5876, page 206, at the Register's Office for Davidson County, Tennessee, also being the Northeast corner of Lot 2, Jackson Square, also being a corner common with Ernest E. Fitzgerald and Don. F. Pierce as or record in Book 6264, page 100, at the Register's Office for Davidson County, Tennessee, also being known as Lot 1, revised Jackson Square Section 4 as of record in Book 5200, page 372, at the Register's Office for Davidson County, Tennessee;

Thence with the common line of Fitzgerald, Pierce and the easterly boundary of Lot 1, Jackson Square, North 01 DEG 12 MIN 44 SEC East, 291.43' to an exiting iron rod in the southerly right-of-way of Windsor Chase Way, width 60', said rod being the Northwest corner of this tract;

Thence with the southerly right-of-way of Windsor Chase Way along a curve to the right, with arc length of 409.79', with a radius of 1248.37', with a chord bearing of S 72 DEG 13 MIN 23 SEC East, with a chord length of 407.95' to an iron rod set;

Thence with the southerly right-of-way of Windsor Chase Way, South 62 DEG 49 MIN 09 SEC East, 260.00' to an iron rod set at the Southeast corner of the right-of-way of Windsor Chase Way;

Thence with the easterly boundary of the right-of-way of Windsor Chase Way, North 27 DEG 10 MIN 51 SEC East, 60.00' to an iron rod set in the right-of-way of Windsor Chase Way and in the boundary of Truxton Village Section 1 as of record in Instrument # 20001026-0106272, at the Register's Office for Davidson County, Tennessee;

Thence with the boundary of Truxton Village, south 62 DEG 48 MIN 06 SEC east, 1005.16' to an iron rod set;

Thence south 84 DEG 43 MIN 00 SEC East, 290.00' to an iron rod set at a corner common with the boundary of Truxton Village and lying in the westerly line of Mertie Ann McDonald as of record in Book 6572, page 36, at the Register's Office for Davidson County, Tennessee;

Thence leaving the boundary of Truxton Village and with the common line of Mertie Ann McDonald, South 07 DEG 30 MIN 51 SEC West, 719.55' to an existing iron rod at a corner common with McDonald and Rare Hospitality International Inc. As of record in instrument # 2004032332516 at the Register's Office for Davidson County, Tennessee. Also being known as the Northwest corner of Lot 2, Resubdivision of Tract # 1, Lealand Bush Subdivision as of record in Book 5800, Page 44, at the Register's Office for Davidson County, Tennessee;

Thence with the common line of Rare Hospitality International Inc. and the westerly boundary of Lot 2, South 07 DEG 42 MIN 38 SEC West, 236.23' to the point of beginning, containing 682,141 square feet (15.659 acres more or less).

Being part of the same property conveyed to Gilbert S. Merritt as of record in Book 1302, page 218, Register's Office for Davidson County, Tennessee.

TRACT 2

Being a 1.826 more or less acre tract land lying in the 11th Councilman District of Davidson County, Tennessee, and being a portion of the property conveyed to Gilbert S. Merritt et ux as evidenced by deed of record in Deed Book 1302, page 218, Register's Office Davidson County, Tennessee, and being more particularly described according to a survey by Anderson-Delk & Associates, Inc., Mark E. Lowrance, Tennessee Registered Land Surveyor No. 1660, dated December 20, 1999, as follows:

Beginning at an iron pin set on the northerly margin of Windsor Chase Way, said point being the most southeasterly corner of Lot 1 of the plan of Jackson Square Subdivision, of record in Plat Book 5190, page 404, Register's Office Davidson County, Tennessee, and the most southwesterly corner of the herein-described tract;

Thence with easterly line of said Lot 1, Jackson Square, North 01 Degrees 35 Minutes 29 Seconds East a distance of 190.67 feet to an iron pin found in the southerly line of Fox Run Office Village, of record in Plat Book 6200, page 46, Register's Office Davidson County, Tennessee;

Thence with the southerly line of Fox Run Office Village, South 81 Degrees 33 Minutes 23 Seconds East a distance of 429.50 feet to an iron pin found in the westerly line of an open space tract on the plan of Truxton Village, Section Two, of record at Instrument No. 20010515-0049898, Register's Office Davidson County, Tennessee;

Thence with the westerly line of said open space tract, South 23 Degrees 19 Minutes 18 Seconds West, passing the southwesterly corner of said open space tract at 28.41 feet, and continuing with the westerly line of an open space tract on the plan of Truxton Village, Section One, of record at Instrument No. 20001026-010627, a total distance of 241.25 feet to an iron pin set in the northerly margin of Windsor Chase Way;

Thence with the northerly margin of Windsor Chase Way, along a curve to the left having a

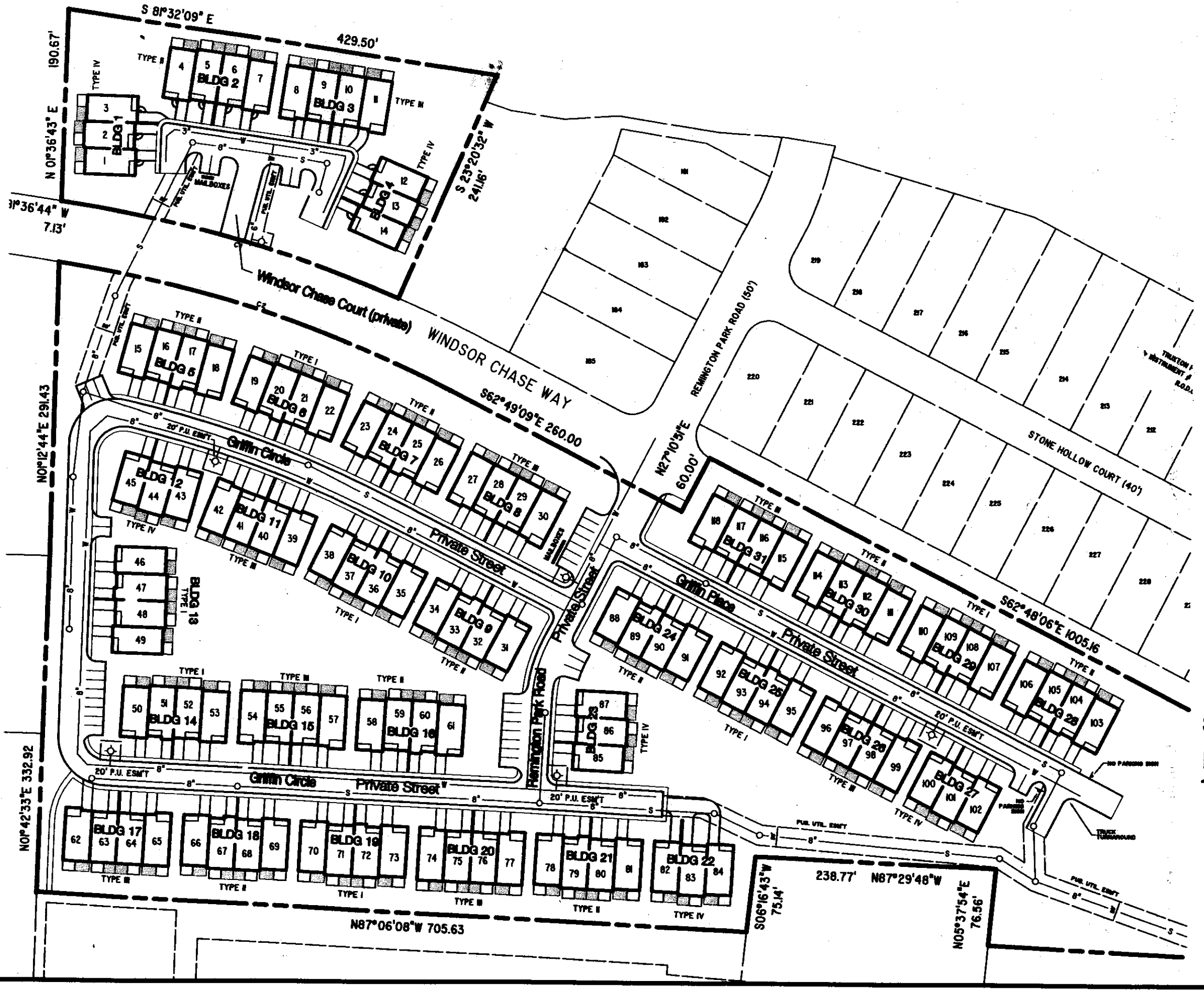
radius 1308.37 feet, through a central angle of 14 Degrees 57 Minutes 15 Seconds, an arc distance of 341.49 feet, said curve having a chord direction of North 74 Degrees 09 Minutes 20 Seconds West and a chord length of 340.52 feet to a point;

Thence continuing North 81 Degrees 37 Minutes 58 Seconds West a distance of 7.13 feet to the Point of Beginning, containing 1.826 acres or 79,526 square feet more or less.

Being a portion of the property conveyed to Gilbert S. Merritt and wife Angie Cantrell Merritt by deed from Leonard L. Clark and wife Jessie P. Clark of record in Book 1302, page 218, Register's Office for Davidson County, Tennessee, said property being solely vested in Gilbert S, Merritt by deed of record In Book 1813, page 215, said Register's Office. The said Gilbert S, Merritt having since died intestate in 1955 leaving his interest to his sole heirs, his son Gilbert S. Merritt, Jr. and a dower interest to his wife Angie Cantrell Merritt. Angie Cantrell Merritt having since died vesting title solely in Gilbert S. Merritt, Jr.

EXHIBIT A-1

Depiction of the Initial Property Subjected to the Terms of the Declaration



north

NOT TO SCALE

Notes

1. Property Map 64-16, parcels 53 & 55
2. Site contains 17.620 acres, more or less
3. All areas outside of units are a public utility and drainage easement.

Exhibit A-1
Sheet 1 of 2 - Site Layout
Exhibit Plat

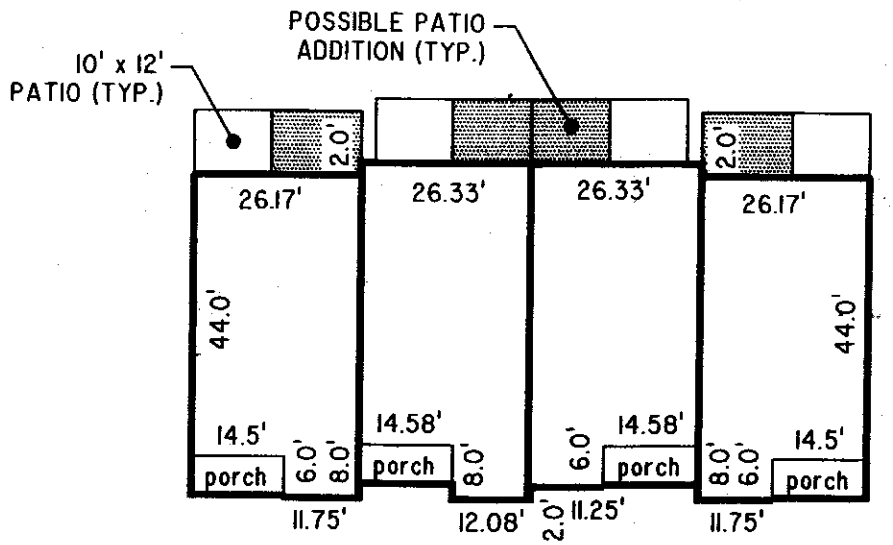
Truxton Village

10-03-06 not to scale

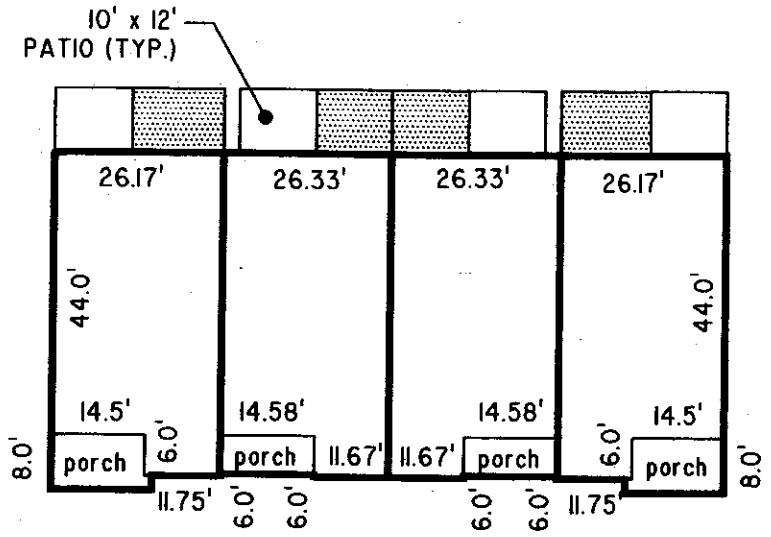
Anderson, Delk, Epps & Associates, Inc.
618 Grassmere Park Drive, Suite 4
Nashville, Tennessee 37211
(615) 331-0809

04-119

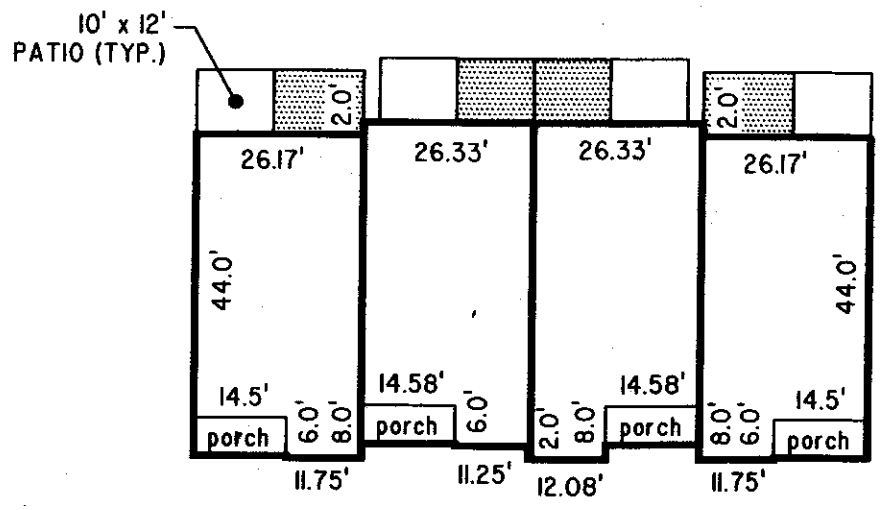
Typical Building Type I



Building Type III



Typical Building Type II



Typical Building Type IV

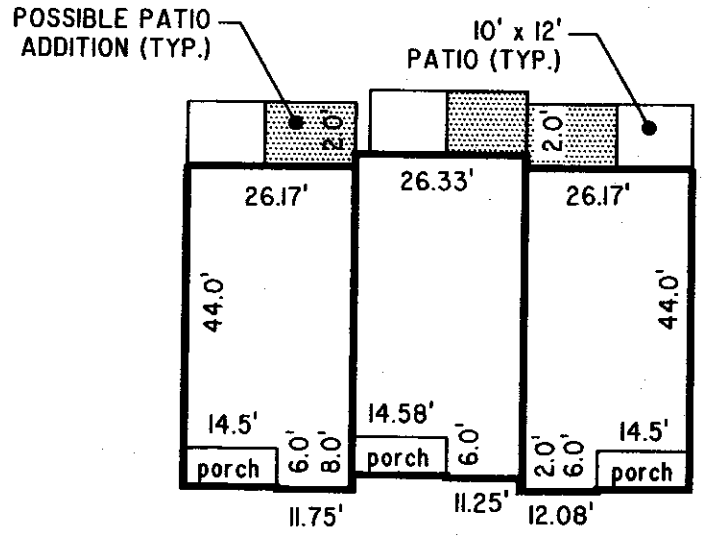


Exhibit A-1
Sheet 2 of 2 - Typical Building Dimensions
Exhibit Plat

Truxton Village

10-03-06 not to scale

Anderson, Delk, Epps & Associates, Inc.
618 Grassmere Park Drive, Suite 4
Nashville, Tennessee 37211
(615) 331-0809

04-119

EXHIBIT B

Bylaws of the Townhomes of Truxton Village Homeowners Association, Inc.

BYLAWS

OF

THE TOWNHOMES OF TRUXTON VILLAGE HOMEOWNERS ASSOCIATION, INC.

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ARTICLE 1: DEFINITIONS

The words defined in the Declaration of Covenants, Conditions and Restrictions for the Townhomes of Truxton Village recorded in the Register's Office for Davidson County, Tennessee (hereinafter referred to as the "Declaration"), shall have the same meaning in these Corporate Bylaws.

ARTICLE 2: OFFICES

2.01. Registered Office. The initial registered office of the corporation shall be at 3000 Business Park Circle, Suite 300, Goodlettsville, Tennessee 37072, and the name of the registered agent of the corporation is E. Randall Phillips, II.

2.02. Other Offices. The corporation may also have offices at such other places both within and without the State of Tennessee as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE 3: MEMBERS AND MEMBERSHIP PRIVILEGES

3.01. Membership. Each Unit Owner shall be a Member of the corporation and no other person or entity shall automatically be entitled to membership. The Developer reserves the right to afford membership privileges in the form of access to the common amenities to owners of other developments of Developer in the vicinity of that certain residential real estate development known as THE TOWNHOMES OF TRUXTON VILLAGE in consideration of the payment of fees equal to the Assessments payable by a Unit Owner or as specified in the Declaration. No person entitled to membership privileges shall be entitled to vote in the Townhomes Association and shall not be considered a "Member" for any other purpose. No Member shall be required to pay any consideration whatsoever solely for his membership in the corporation.

ARTICLE 4: MEETINGS OF MEMBERS

4.01. Place of Meetings. Meetings of the Members of the corporation may be held at a place to be determined by the Board of Directors within Davidson County, Tennessee.

4.02. Annual Meeting. The first regular annual meeting of the Members may be held, subject to the terms hereof, on any date, at the option of the Board of Directors; provided, however, that the first meeting may (if necessary to comply with federal regulations) be held no later than the earlier of the following events: (a) four months after all of the Units have been sold by the Developer; or (b) five years following conveyance of the first Unit by the Developer. Thereafter, unless otherwise specified in a written notice from the Board of Directors, an annual meeting of the Members of the corporation shall be held each year on the second Thursday of the third month

following the close of the fiscal year if not a legal holiday, and if a legal holiday, then on the next secular day following, at 7:00 p.m. at which time the Members shall elect a Board of Directors, and shall transact such other business as may properly be brought before the meeting. Provided, however, the annual meeting must be held no later than forty-five (45) days from the original scheduled date.

4.03. Special Meeting. Special meetings of the Members, for any purpose or purposes, may be called by the president, the Board of Directors, or by Members having not less than ten (10%) percent of the total percentage values of those votes entitled to be cast at such meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of such meeting.

4.04. Notice. Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than fifteen (15) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each Member of the corporation entitled to vote at such meeting.

4.05 Quorum. The presence in person or by proxy of more than ten (10%) percent of the percentage values of those votes entitled to be cast at a meeting of the Members and at least ten percent (10%) of the percentage values of each class of Members shall constitute a quorum at all meetings of the Members for the transaction of business. If a quorum is not present, the Members entitled to vote shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

4.06. Majority Vote; Withdrawal of Quorum. When a quorum is present at any meeting, the vote of the holders of more than fifty per cent (50%) of the percentage values of those votes entitled to be cast of Members qualified to vote and present in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which by express provision of the Declaration, the Charter of the corporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum.

4.07. Method of Voting; Proxies. Each Member shall be entitled to a vote for each Unit owned by such Member. No Member, other than the Developer, shall be entitled to vote at any meeting of the corporation until such Member has presented evidence of ownership of a Unit in THE TOWNHOMES OF TRUXTON VILLAGE to the corporation, if such evidence is demanded, the sufficiency of which shall be determined by the members of the Board present at the meeting. The vote of each Member may only be cast by such Member or by a proxy given by such Member to his duly authorized representative bearing a date not more than eleven months prior to such meeting. Such proxy shall be filed with the secretary of the corporation prior to or at the time of the

meeting. If title to a Unit shall be in the name of two or more persons as Co-owners, all of such persons shall be Members of the corporation and are referred to herein as "Joint Co-owners". Any one of such Joint Co-owners may vote at any meeting of the Members of the corporation and such vote shall be binding upon such other Joint Co-owners who are not present at such meeting until written notice to the contrary has been received by the Board of Directors in which case the unanimous vote of all such Joint Co-owners (in person or by proxy) shall be required to cast their vote as Members. If two or more of such Joint Co-owners are present at any meeting, their unanimous action shall also be required to cast their vote as Members of the corporation.

4.08. Cumulative Voting Not Permitted. Cumulative voting for Directors shall not be permitted.

ARTICLE 5: DIRECTORS

5.01. Management. The business and affairs of the corporation shall be managed by its Board of Directors who may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute, the Declaration, the Charter, or these Bylaws, directed or required to be exercised or done by the Members.

5.02. Number; Qualifications; Election; Term. The initial Board of Directors shall consist of three (3) Directors, each of whom shall be a Member of the Townhomes Association or a partner or employee of the Developer, or its subsidiaries or affiliates. The Members of the initial Board of Directors shall serve terms of two (2) years until the annual meeting of Members following such election in the designated term of office of such Directors. Each Director elected to replace an original Director upon the expiration of his term of office shall serve for a term of office ending with the third annual meeting of Members following his election or until his successor shall be elected and shall qualify. The Directors shall be appointed by the Developer until after the first of (a) the conveyance by the Developer of seventy-five percent (75%) of the Units to Unit Owners (b) April 1, 2009; or (c) when the Developer, in its sole discretion, so determines. Directors shall serve without compensation. After transfer of control to the Unit Owners, as provided in the Declaration, there shall be five (5) Directors elected by the Members who shall each serve terms of two (2) years.

5.03. Removal; Change in Number; Vacancies. Any Director may be removed either for or without cause, at any special meeting of the Members of the corporation by the affirmative vote of a majority of the Members present in person or by proxy at such meeting and entitled to vote, if notice of the intention to act upon such matter shall have been given in the notice calling such meeting. If any vacancy occurs in the Board of Directors, caused by death, resignation, retirement, disqualification or removal from office of any Director or otherwise, the remaining Board members may appoint a successor who shall serve until the next annual meeting of the Members at which time, a successor shall be elected to serve the remaining unexpired term of his predecessor in office, if any. Any Directorship to be filled by reason of an increase in the number of Directors shall be filled by election at an annual meeting of Members or at a special meeting of Members called for

that purpose.

5.04. Place of Meetings. The Directors of the corporation shall hold their meetings, both regular and special within Davidson County, Tennessee.

5.05. Annual Meetings. The annual meeting of each newly elected Board shall be held without further notice immediately following the annual meeting of Members of the corporation, and at the same place, unless by unanimous consent of the Directors then elected and serving such time or place shall be changed.

5.06. Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board.

5.07. Special Meetings. Special meetings of the Board of Directors may be called by the president on a three (3) days notice to each Director, either personally or by mail; special meetings shall be called by the president or secretary in like manner and on like notice on the written request of two (2) Directors. Except as may be otherwise expressly provided by statute, the Charter or these Bylaws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in a notice or waiver of notice.

5.08. Quorum. At all meetings of the Board of Directors the presence of a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business. The act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

5.09. Committees Having Board Authority. The Board of Directors may, by resolution approved by vote or written consent by a majority of the whole Board, designate an Architectural Control Committee, a Nominating Committee for members of the Board of Directors and such other committees as deemed necessary to consist of two (2) or more of the Directors of the corporation. Any such committee, to the extent provided in said resolution, shall and may exercise all of the authority of the Board of Directors in the management of the business and affairs of the corporation, except where action of the full Board of Directors is required by statute or the Charter.

5.10. Other Committees. Other committees not having and exercising the authority of the Board of Directors in the management of the affairs of the corporation may be designated and appointed by a resolution adopted by a majority of the Directors at a meeting at which a quorum is present, or by the president if he is authorized by a like resolution of the Board of Directors. Membership on such committees may, but need not be, limited to Directors or Members of the corporation.

5.11. Procedure. All committees shall keep regular minutes of their proceedings and shall report the same to the Board when required.

5.12. Managing Agents. The Board of Directors may employ for the corporation a management agent at a compensation established by the Board of Directors and such management agent shall perform such duties and services with respect to THE TOWNHOMES OF TRXUTON PARK development as the Board of Directors shall authorize, and the Board of Directors may delegate to such management agent such duties with respect to management, repair and maintenance of THE TOWNHOMES OF TRUXTON VILLAGE development which are not by statute, the Declaration, the Charter or these Corporate Bylaws, required to be performed by or have the approval of the Board of Directors or the Members of the corporation.

ARTICLE 6: NOTICES

6.01. Method. Whenever notice is required to be given to any Director or Member, and no provision is made as to how such notice shall be given, it shall not be construed to mean personal notice, but any such notice may be given in writing, by mail, postage prepaid, addressed to such Director or Member at such address as appears on the records of the corporation. Any notice required or permitted to be given by mail shall be deemed to be given at the time when the same is deposited in the United States mail.

6.02. Waiver. Whenever any notice is required to be given to any Member or Director of the corporation a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated in such notice, shall be deemed equivalent to the giving of such notice.

ARTICLE 7: OFFICERS

7.01. Number; Titles. The officers of the corporation shall be elected by the Directors from among the members of the Board of Directors and shall be a president, a secretary and a treasurer. Any two (2) or more offices may be held by the same person except the offices of president and secretary shall not be held by the same person.

7.02. Election. The Board of Directors at its first meeting after each annual meeting of Members shall choose a president, a secretary, and a treasurer, all of whom shall be members of the Board.

7.03. Other Officers. The Board of Directors may appoint such other officers and agents as it shall deem necessary, who shall be appointed for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

7.04. Salaries. The salaries of all officers of the corporation, if any, shall be fixed by the Board of Directors.

7.05. Term of Office; Removal. Each officer of the corporation shall hold office until the annual meeting of the Board of Directors next following his election and thereafter until his successor is chosen and qualified in his stead or until his death or until his resignation or removal from office. Any officer or agent elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board of Directors, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

7.06. President. The president shall be the chief executive officer of the corporation; he shall preside at all meetings of the Members and the Board of Directors, shall have general and active management of the affairs of the corporation, shall see that all orders and resolutions of the Board are carried into effect, and shall perform such other duties as the Board of Directors shall prescribe.

7.07. Secretary. The secretary shall attend all sessions of the Board of Directors and all meetings of the Members and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for any committees when required. He shall give, or cause to be given, notice of all meetings of the Members and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or president, under whose supervision he shall be.

7.08. Treasurer. The treasurer shall have the custody of the corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements of the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, shall render to the president and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the corporation, and shall perform such other duties as the Board of Directors may prescribe. If required by the Board of Directors, he shall give the corporation a bond in such form, in such sum, and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement, or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

ARTICLE 8: MISCELLANEOUS PROVISIONS

8.01. Reserves. There may be created by resolution of the Board of Directors such reserve or reserves as the Directors from time to time, in their discretion, think proper to provide for contingencies, or to repair or maintain any portion of THE TOWNHOMES OF TRUXTON VILLAGE or for such other purposes as the Directors shall think beneficial to the corporation, and the Directors may modify or abolish any such reserve in the manner in which it was created.

8.02. Checks. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

8.03. Fiscal Year. The fiscal year of the corporation shall be the calendar year unless otherwise fixed by resolution of the Board of Directors.

8.04. Seal. The corporate seal, if any, shall be in such form as may be determined by the Board of Directors. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

8.05. Indemnification. The corporation shall indemnify any Director, officer, or employee, or former Director, officer, or employee of the corporation, against expenses actually and necessarily incurred by him, and any amount paid in satisfaction of judgments, in connection with any action, suit or proceeding, whether civil or criminal in nature, in which he is made a party by reason of being or having been such a Director, officer, or employee (whether or not a Director, officer or employee at the time such costs or expenses are incurred by or imposed upon him) except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty. The corporation may also reimburse to any Directors, officer or employee the reasonable costs of settlement of any such action, suit or proceedings, if it shall be found by a majority of a committee of the Directors not involved in the matter of controversy, whether or not a quorum, that it was to the interests of the corporation that such settlement be made and that such Director, officer or employee was not guilty of gross negligence or willful misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such Director, officer, or employee may be entitled by law or under bylaw, agreement, vote of Members or otherwise.

8.06. Inconsistencies. In the event these Bylaws shall be inconsistent with the Declaration, then the Declaration shall be controlling.

8.07. Amendment of Bylaws. These bylaws may not be altered, amended or repealed except by the affirmative vote of more than two-thirds (2/3) of the percentage values of those votes entitled to be cast by Members qualified to vote. Any such amendment shall not be operative until it is recorded with the Register of Deeds of Davidson County, Tennessee. Notwithstanding the foregoing, if so required by applicable and effective federal law or regulations, for so long as the Developer maintains its weighted vote as described in the Declaration, any and all amendments to these Bylaws shall be subject to the veto of HUD/VA.

8.08. Table of Contents; Headings. The table of contents and headings used in these bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation.

8.09. Care and Upkeep; Collection of Common Expenses; Personnel; Changes to Administration of the Development. The following shall all be governed and determined (as the case may be) in accordance with the terms of the Declaration: (1) care, upkeep and surveillance of THE TOWNHOMES OF TRUXTON VILLAGE, the Units therein and the Common Elements thereon; (2) the manner of collecting assessments for payment of the Common Expenses; and (3) the designation and dismissal of a property manager and other such personnel as are necessary for the administration of THE TOWNHOMES OF TRUXTON VILLAGE.

CERTIFICATION

I hereby certify that the foregoing Bylaws were adopted by The Townhomes of Truxton Village Homeowners Association, Inc. on the ____ day of_____, 2006.

_____
President