This instrument prepared by:
Robert J. Notestine III
Attorney at Law
109 Kenner Avenue
Suite 201
Nashville, TN 37205

BILL GARRETT, Davidson County
Trans:T20090080191 REST
Recvd: 11/25/09 12:26 29 pgs
Fees:147.00 Taxes:0.00
20091125-0108519

| { New Owners Address: | {Send Tax Bills To: | {Map & Parcel Number} |
|---|---|---|
| { | { | { } |
| {Utah Holdings, LLC | { Same | { Map 103-01 } |
| {1970 Oakcrest Avenue, Suite 118 | { | { Parcel 371.00 } |
| {Roseville, MN 55113 | { | { } |
| { | { | { } |

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ESTABLISHING THE UTAH AVENUE TOWNHOMES

THIS DECLARATION is made this 18TH day of November, 2009, by Utah Holdings, LLC (hereinafter called "Developer" or "Declarant"), for itself, it's successors or assigns wherein the Developer makes the following declarations and submissions.

1. Purpose: The purpose of this Declaration of Covenants, Conditions and Restrictions (hereinafter also referred to as the Declaration) is to submit the land described in Paragraph 3 and the improvements thereon established pursuant to Chapter 27 of Title 66 of Tennessee Code Annotated; and expressly 66-27-101, et seq.

2. Name and Address: The name by which this Townhome Development is to be identified is the Utah Avenue Townhomes and is located at 4009 Utah Avenue, Nashville, Tennessee 37209.

3. Submission of the Property: The Developer hereby submits the following described property (hereinafter the Property) together with the buildings and improvements thereto, owned by the Developer in fee simple absolute, to the provisions of Chapter 27 of Title

66, Tennessee Code Annotated, hereby establishing a townhome development pursuant to said Chapter. The Property is described on the attached Exhibit A which is incorporated herein by this reference.

4. Land Included in Property: The land included in the Property is also described in the Plan of the Utah Avenue Townhomes, attached as exhibit B, which is made a part hereof by this reference (Exhibit B). Said land will sometimes be referred to as the "Property". The fee simple absolute title to the land area underneath each unit shown on said plan as Exhibit B and the improvements located thereon shall be conveyed to the owner of each such lot for the exclusive use of such owner. The land immediately underneath each unit may also be referred to herein as a lot on or the lots. Fee simple absolute title in any common elements (hereinafter referred to as Common Elements or Common Areas), shall be vested in the Owner's Association hereby established and which shall operate as a Townhouse Corporation under the name of the Utah Avenue Townhomes (hereinafter called the "Association"). The Common Elements may be maintained solely by the Utah Avenue Townhomes Owners Association. Certain areas may be referred to as Limited Common Areas or Limited Common Elements on the plan recorded as Exhibit B to this document. The Limited Common Elements benefit solely the Owner or Owners of a particular Unit, Lot or Dwelling which is the sole view of these areas. The Limited Common Areas benefitting only Unit 1 are designated on Exhibit B as LCE-Unit 1. Those Limited Common Areas benefitting only Unit B are designated on Exhibit B as LCE- Unit 2.

5. Membership and Voting Rights in the Association. Every person who is a record owner

of a fee or undivided fee interest in any lot and dwelling unit situated within the Utah Avenue Townhomes shall automatically be a member of the Association, provided, however that any such person who holds such interest merely as a security for the performance of an obligation shall not be a member, except as hereinafter set forth and as set forth in the By-laws of the Association, which are incorporated herein by reference (Exhibit C).

6 The Building and Ground Area. The Development consists of two (2) dwelling units, with a dwelling designated on Exhibit A as Unit 1 and Unit 2. The site plan and/or foundation for the aforesaid Units are reflected on the Plan, attached as Exhibit B. The Common Areas and Limited Common Areas are all shown on the Plan. Anything not labeled as a Unit or as a Limited Common Elements shall be Common Area or a Common Element

7. Units. The words unit, dwelling, dwelling unit, apartment and private element have the same meaning throughout this Declaration and By-Law appended hereto, and are used interchangeably.

8. Use of Units. Each of the Units shall be used as a single-family residence only.

9. Encroachments. If any portion of the Common Elements now encroaches upon any dwelling or if any dwelling now encroaches upon any other dwelling or upon any portion of the Common Elements, as a result of the construction of a building or any building, or if any such encroachment shall occur hereafter as a result of settling or shifting, a valid easement for the encroachment and for the maintenance of the same so as long as such building stands, shall exist. In the event such building, a dwelling, and adjoining

dwelling or any adjoining Common Element, shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and then rebuilt, encroachments of parts of the Common Elements upon any dwelling or of any dwelling upon any other dwelling or upon any portion of the Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exists so long as any such building shall stand.

10. Dwelling Units Subject to Declaration. All present and future co-owners and tenants of dwelling units shall be subject to and shall comply with the provisions of this Declaration which is also referred to as the Declaration and the By-Laws appended hereto. The acceptance of a deed of conveyance, devise, inheritance, or the entering into a lease of a dwelling or entering into occupancy of a dwelling shall constitute an agreement that the provisions of this Declaration and such By-law provisions, covenants, and restrictions are accepted and ratified by each co-owner and tenants, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any persons having at any time any interest or estate in such dwelling, as though such provisions were recited and stipulated in full in each and every deed or lease thereof.

11. Dwelling Units Subject to By-laws and Rules and Regulations. All present and future co-owners, tenants and occupants of a dwelling unit shall be subject to, and shall comply with the provisions of the By-Laws and the Rules and Regulations appended hereto and recorded herewith, pursuant to T.C.A. 66-27-101, et seq., as they may be amended from time to time. The acceptance of a deed of conveyance, devise or of a lease to a dwelling

unit, or the entering into occupancy of any dwelling unit shall constitute an agreement that the provisions of the said By-laws and the Restrictions, as they may be amended from time to time, are accepted and ratified by such co-owner, tenant and occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such apartment and lot, as though such provisions were received and stipulated at length in each and every deed, conveyance, or lease, thereof. Insurance covering the Units and the Unit Owners shall be obtained by the Unit Owner(s) as provided in the By-laws.

12. Amendment. After the sale of both Units by the Declarant, his Declaration may be amended by a deed or amendment joined in by the co-owners representing one hundred percent (100%) of the total then existing dwelling units in the Horizontal Property Regime which deed shall be recorded in the Register's Office of Davidson County, Tennessee. Notwithstanding this provision, the Declaration may be amended solely by the Declarant until it has sold both Units.

13. Waiver. No provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce it, regardless of the number of violations or breaches which may occur.

14. Captions. The captions herein are inserted only as a matter of convenience and for reference and neither define, limit, or described the scope of this Declaration nor the intent of any provision hereof.

15. Gender. This use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the singular shall be deemed to refer to the plural and visa versa,

wherever the context so requires.

16. Use Restrictions. All Unit Owners must adhere and comply with the following restrictions:

a. The common areas must be maintained in a clean and neat area at all time. The placement of debris, trash, animal excrement is strictly prohibited.

b. No exotic pets may reside or be brought into the common areas on any Unit.

c. No dog may reside in any Unit if it weighs over forty (40) pounds without the approval of the Board of Directors of the Association.

d. No Unit may be used for commercial or business use except as a home office may be maintained in a Unit if permitted by city zoning order.

e. No Unit shall be used to maintain and have pigs, chicken, cattle or other live stock.

17. Severability. In the event any provisions of this Declaration is determined by a court of competent jurisdiction to be void or invalid, the remaining provisions shall remain in full force and effect and shall be enforced in the courts of this state.

18. Provisions Relative to Mortgagee's Rights and to Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Regulations. Notwithstanding anything to the contrary contained in this Declaration, or in the Bylaws which are attached hereto, all terms, conditions and regulations which are not existing, or which may be amended from time to time, by the Federal Home loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") pertaining to horizontal property regimes are hereby incorporated as terms and conditions of the

Declaration and Bylaws and such shall be governing upon the Property, the Developer, and the Association, so long as such terms or conditions are not inconsistent with the laws of the State of Tennessee as found in Tennessee Code Annotated, Section 66-27-101, et. seq., as such may be amended.

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

a. A first mortgagee, and any insurer or guarantor of any mortgage or deed of trust, under 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 affect prior to the time such holder comes into possession of the Unit.

c. Unless all (100%) of the first mortgagees (based upon one (1) vote for each mortgage owned) or owners (other than the Developer) of Units have given their prior written approval, the Association shall not be entitled to:

i. Change the percentage interests of ownership of all or any Unit or Units Owners, except that percentage ownership of the Association may be reduced due to the addition of a phase or phases to the horizontal property regime as provided hereinabove.

ii. Partition or subdivision any Unit or the Common Elements.

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

iv. Use hazard insurance proceeds for losses to any Property (whether to individual Units or Common Elements) for other than the repair, replacement, or reconstruction of such improvements, except as provided in Tenn. Code Ann., Section 66-27118, 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 funds for maintenance, repair and replacement of Common Elements which must be replaced on a periodic basis will be established and funded by regular monthly payments rather than by special assessments. A working capital fund for the initial months of operation equal to at least two (2)

months assessments for each Unit must be established, collected and transferred to the Association at the time of closing of sale by the Developer of each Unit and maintained in an account for the use and benefit of the Association.

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

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

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

i. Upon written request, the Association shall give to any mortgagee of a Unit, the FHLMC, FNMA, any lending institution servicing such mortgages as are acquired by the FHLMC or RNMA, or any insurer or guarantor of a mortgage or deed of trust on a Unit, 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

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

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

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

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

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

IN WITNESS WHEREOF, the Developer has executed this Declaration at Minneapolis, Ramsey County, Minnesota on this 18th day of November, 2009.

UTAH HOLDINGS, LLC

By: _____
RUSSELL SCHMIDT, Member

STATE OF Minnesota
COUNTY OF Ramsey

Before me, the undersigned notary of the state and county mentioned, personally appeared Russell Schmidt, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him to be President of the Utah Holdings, LLC and as such acknowledged that he is authorized to execute the foregoing instrument on behalf of the Utah Holdings, LLC the within named bargainor, a corporation executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as President.

Witness my hand and seal, at office in St. Paul, Minnesota this 18 day of November, 2009.

_____
Notary Public

My Commission Expires: 1-31-2010

CHRISTIE E SCHMIDT
Notary Public
Minnesota
My Comm. Expires Jan 31, 2010

EXHIBIT A

THE PROPERTY

Land in Davidson County, Tennessee, being the westerly 70 feet of Lot No. 78 on the plan of West End Annex, of record in Book 332, Page 61, Register's Office for said County.

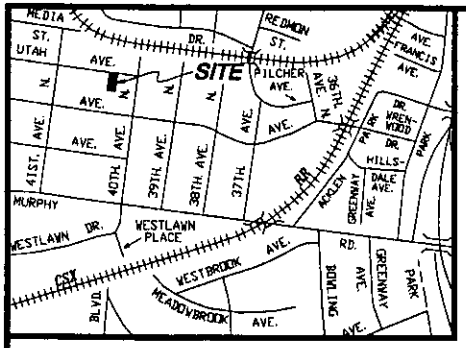
Said part of Lot No. 78 fronts 75 feet on the southerly margin of Utah Avenue, formerly seventh street, and extends back between parallel lines 163.3 feet to an ally.

Being the same real property conveyed to Utah Holdings, LLC by Warranty Deed from Robin J. Kaye of record in Instrument 201091102-0101035, Register's Office for Davidson County, Tennessee.

This property is improved property known as 4009 Utah Avenue, Nashville, Tennessee 37209.

## EXHIBIT B

Plan of Utah Avenue Townhomes




LOCATION MAP
N.T.S.

**NOTES:**

1. THIS SURVEY MEETS THE REQUIREMENTS OF AN URBAN LAND SURVEY (CATEGORY I) WITH A RATIO OF PRECISION OF THE UNADJUSTED SURVEY GREATER THAN 1:10,000 AS PER STANDARDS OF PRACTICE ADOPTED BY THE BOARD OF EXAMINERS FOR LAND SURVEYORS, STATE OF TENNESSEE.
2. BEARINGS SHOWN BASED ON THE TENNESSEE STATE GRID.
3. PROPERTY ZONED "R6" (OVERLEO).
4. THIS PROPERTY IS NOT LOCATED IN A FLOOD HAZARD AREA AS PER FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD BOUNDARY AND FLOODWAY MAP COMMUNITY PANEL NO. 47037C0214F, DATED 04/20/2001 ZONE "X".
5. THIS SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. ABOVE GROUND AND UNDERGROUND UTILITIES SHOWN WERE TAKEN FROM VISIBLE APPURTENANCES AT THE SITE, PUBLIC RECORDS AND/OR MAPS PREPARED BY OTHERS. THIS SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, WHETHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED. THEREFORE, RELIANCE UPON TYPE, SIZE AND LOCATION OF THE UTILITIES SHOWN SHOULD BE DONE SO WITH THIS CIRCUMSTANCE CONSIDERED. DETAILED VERIFICATION OF EXISTENCE, IN TENNESSEE, IT IS A REQUIREMENT, PER "THE UNDERGROUND UTILITY DAMAGE PREVENTION ACT, THAT ANYONE WHO ENGAGES IN EXCAVATION MUST NOTIFY ALL KNOWN UNDERGROUND UTILITY OWNERS, NO LESS THAN (3) NOR MORE THAN TEN (10) WORKING DAYS PRIOR TO THE DATE OF THEIR INTENT TO EXCAVATE AND ALSO TO AVOID ANY POSSIBILITY HAZARD OR CONFLICT. TENNESSEE ONE CALL 1-800-368-1997.
6. NO TITLE REPORT WAS FURNISHED TO THIS SURVEYOR.

**DEED REFERENCE:**
BEING PROPERTY CONVEYED TO ROBIN J. KAYE BY DEED OF RECORD IN BOOK 6639, PAGE 867, R.O.D.C.

**PROPERTY MAP:**
PARCEL NO. 10304037100, DAVIDSON COUNTY.

**PLAT REFERENCE:**
BEING THE WESTERLY 75' OF LOT 76 AS SHOWN ON THE PLAT OF RECORD IN PLAT BOOK 332, PAGE 61, R.O.D.C.

**SURVEYORS CERTIFICATE:**
I (WE) HEREBY CERTIFY THAT THIS IS A CATEGORY I SURVEY AND THE RATIO OF PRECISION OF THE UNADJUSTED SURVEY IS GREATER THAN 1: 10,000 AS SHOWN HEREON

KIRK B. DUCLOS, R.L.S. TENN. REG. NO. 1838

DATE:

UTAH AVENUE

ALLEY

Parcel ID = 10304037000
DEBORAH J. COBB
DB-00006937 0000746, R.O.D.C.

Parcel ID = 10304037200
DINO DE SANTIS
DB-20000521 0061750, R.O.D.C.

Existing 2 Story Residence

Proposed 2 Story Residence

New Parking Pad

New Driveway

LCE

IP(CD 1/2" PIPE

IP SET

S82°17'54"E 75.01'

N82°17'54"W 75.01'

N08°01'13"E 162.70'

S08°01'13"W 162.70'

0' 20' 40' 60'
SCALE: 1"=20'

## LEGEND

These standard symbols will be found in the drawing.

- SEWER CLEANOUT
- IP(O)= EXISTING 1/2" IRON PIPE
- IP SET= IRON PIN & CAP SET
- SANITARY SEWER MANHOLE
- WATER METER
- WOOD FENCE
- GRAVEL
- CONCRETE
- WOOD DECK
- BUILDING
- ADJOINING PROPERTY LINES
- PVC FENCE
- BOUNDARY LINE
- CHAIN LINK FENCE

**SURVEYOR'S NOTE:**
SURVEYOR'S LIABILITY FOR THIS DOCUMENT SHALL BE LIMITED TO THE ORIGINAL PURCHASER AND DOES NOT EXTEND TO ANY UNNAMED PERSON OR ENTITY WITHOUT AN EXPRESSED RE-CERTIFICATION BY THE SURVEYOR WHOSE NAME APPEARS UPON THIS SURVEY.

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Duclos Survey & Design, Inc.
P.O. Box 241
Nolensville, TN 37135
Ph. 615-776-4232
Fax. 615-776-4231

# Plot Plan

| | | |
|---|---|---|
| DRAWN KSD | DATE 09/21/09 | 4009 Utah Ave. 24th Council District |
| APPROVED KSD | DATE 09/21/09 | Davidson County Nashville, TN |
| SCALE 1" = 20' | SHEET 1 of 1 | PROJECT NO. 9034 |

## ***EXHIBIT C***

BY-LAWS FOR THE UTAH AVENUE TOWNHOME OWNER'S, INC.

1. Identity.

(a) These are the By-Laws of The Utah Avenue Townhomes herein called the "Horizontal Property Regime", and The Utah Avenue Townhomes Owner's Association, Inc.. herein called the "Association", a corporation not for profit, incorporated under the laws of the State of Tennessee, the Charter of which was filed in the Office of the Register of Davidson County, Tennessee.

(b) The Association has been organized for the purpose of administering the Horizontal Property Regime established by a Declaration recorded simultaneously with these Bylaws, Register's Office of Davidson County, Tennessee, herein called the "Declaration," pursuant to Title 66, Chapter 27 Section 201 et seq., as amended, Tennessee Code Annotated, herein called the "Horizontal Property Act", which Horizontal Property Regime is identified by the name of The Gentle Wind Condominiums and is located at 4009 Utah Avenue, Nashville, Tennessee 37209.

2. Members.

The Unit Owners, including the Declarant shall be the initial members of the Association. After both units are sold, the Developer/Declarant shall resign as member and the members of this Association shall become only the remaining Unit Owners in the Utah Avenue Townhomes and in the Association.

3. Meetings Of Members.

(a) The Members of the Association shall have an annual meeting. The annual meeting of Members shall be held on a date as scheduled by the Board of Directors. The first Annual Meeting shall be held within ninety (90) days after the final Unit has been sold by the Declarant.

(b) Special meetings of members shall be held called by the President, Secretary-Treasurer, or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from Members entitled to cast not less than all of the votes of the entire membership.

(c) Notice of all Members' meetings, stating the time and place, and the objects for which the meeting is called, shall be given by the President or Secretary, unless waived in writing.

(d) The aggregate number of votes for all Unit owners shall be two (2) and one (1) vote shall be allocated to each Unit. The Declarant will have one (1) vote for each unit it owns including one (1) vote for each of the two planned units until such time as they are constructed and sold by the Declarant.

(e) If a Unit is owned by one (1) person, his or her right to vote shall be established by the record title to his Unit. If a Unit is owned by more than one (1) person, or is under lease, the person entitled to cast the vote for the Unit shall be designated by a certificate

signed by all of the record owners of the Unit and filed with the Secretary of the Association. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit shall be designated by a certificate of appointment signed by the President, of the corporation and filed with the Secretary of the Association. Such certificates shall be valid until revoked, or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote of a Unit may be revoked by any Unit Owner at any time.

If no certificate is presented to the Secretary and a Unit is owned by two (2) or more individuals, any record owner present at, a meeting of the Association may cast the vote of the Unit. If more than one (1) record owner of a Unit is present at a meeting, only one such owner may cast the vote of the Unit. If the record owners of a Unit cannot unanimously agree as to who may cast the vote of the Unit, the vote of the Unit shall not be counted.

(f) Votes may be cast in person or by proxy. Proxies may be made by any person entitled to vote. They shall be valid only for the particular meeting designated and must be filed with the Secretary before the appointed time of the meeting.

(g) Any Unit Owner who is delinquent for more than sixty (60) days in the payment of any assessment owing for his Unit as determined by the books of the Association as of the date of a meeting, shall not be entitled to vote at such meeting.

(h) The presence of individual Unit Owners entitled to cast a majority of the votes of the Association is required at members' meetings to adopt decisions, except where approval by a greater number of members is required by the Declaration, Charter, or these By-Laws.

(i) The order of business at annual members' meetings, and as far as practical at all other members' meetings, shall be:

(1) election of a chairman of the meeting, if the President is unavailable to preside;
(2) calling of the roll and certifying the proxies;
(3) proof of notice of meeting or waiver of notice;
(4) reading and disposal of any unapproved minutes;
(5) reports of officers;
(6) reports of committees;
(7) election of the Board member;
(8) unfinished business;
(9) new business, and
(10) adjournment.

4. Directors.

(a) The affairs of the Association shall be managed by a Board of Directors. The Board of Directors shall consist of two (2) persons, all of whom shall be persons appointed by the Declarant until such time as both Units have been sold or conveyed to third parties. After the sale or conveyance, of all two (2) Units, the Board of Directors shall be comprised of persons, all of whom shall be Unit Owners current in their assessment fees. In the event any Unit is owned by a partnership, corporation, or fiduciary, such person shall be a partner, officer of the corporation, or the Fiduciary or officer of the Fiduciary, as the case may be. The Board of Directors shall serve without compensation. Thereafter, the compensation, if any, of the

Directors shall be as fixed by the vote of a majority of the Unit Owners.

(b) Two persons shall be elected to serve as the Board of Directors, and the term of office of those elected shall be as follows: the term of office of each Director shall be on an annual basis. The election shall be by a plurality of the votes cast, each member voting must cast his vote (or votes) for as many nominees as there are vacancies to be filled, but there shall be no cumulative voting.

(c) Vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors until the next annual meeting at which time a Director shall be elected to fill the remaining term of any such vacancy, except as provided in paragraph a hereinabove.

(d) Any Director may be removed by concurrence of all of the votes of the Board at a Board meeting called for that purpose, except that in the event the Declarant, or its designees serves as Directors, neither Declarant nor such designees may be removed or voted from the Board until such time as the Declarant has sold both Units in the Horizontal Property Regime.

(e) In the event of vacancies during the existence of the term of the Board of Directors, the remaining Directors shall fill the vacancies.

5. Directors' meetings.

(a) The organizational meeting of a newly elected Board of Directors shall be held within ten (10) days of its election at such place and time as shall be Fixed by the Directors at the meeting of which they were elected, and no further notice of the organizational meeting shall be necessary providing a quorum shall be present. The organizational meeting shall occur within ninety (90) hays after both Units are sold by the Developer

(b) Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, or telegraph, at least three (3) days prior to the day named for such meeting.

(c) Special meetings of the Directors may be called by the President. Notice of the meeting shall be given at least three (3) days prior to the day named. Notice shall state the time, place, and purpose of the meeting.

(d) Any Director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

(e) A quorum at Directors' meetings shall consist of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except where approval by a greater number of Directors is required by the Declaration, Charter, or these By-Laws. If, at any meeting of the Board of Directors, less than a quorum is present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting-any business which might have been transacted at the meeting originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

(f) The presiding officer of Directors' meetings shall be the President. In the absence of the President, the Directors present shall designate one of their number to preside.

(g) The order of business at a Directors' meeting shall be:

(1) calling of roll;
(2) proof of due notice of meeting;
(3) reading and disposal of any unapproved minutes;
(4) reports of officers and committees;
(5) election of officers (if necessary)
(6) unfinished business;
(7) new business; and
(8) adjournment.

(h) The Directors may adopt any resolution by an instrument in writing, signed by all of the then qualified and acting Directors, provided there then be at least two (2) in number, and any such resolution, when so executed, shall have the force and validity of a resolution adopted at any regular or special meeting.

(I) All minutes and records of actions of the Directors, and all records pertaining to operations of the Association, shall be kept at the management office or at such place as may be designated by the Board of Directors, and shall be available to members for inspection at all times during normal business hours.

6. Powers and Duties of the Board of Directors.

(a) All of the powers and duties of the Association existing under the Horizontal Property Regime Act, the Declaration, the Charter, and these By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors, or employees, subject only to approval by Unit Owners when such is specifically required. Compensation of employees of the Association shall be fixed by the Directors. A Director may be an employee of the Association, and a contract for management of the Horizontal Property Regime may be entered into with a Director. The Board of Directors is specifically charged with the responsibility of providing for the care and upkeep of all Common Elements and certain Limited Common Elements of the Horizontal Property Regime pursuant to the provisions of the Declaration. Specifically included in the foregoing general powers of the Board of Directors are the following powers and duties, which are listed by way of enumeration and not by limitation:

(1) To elect and remove the officers of the Association;
(2) To administer the affairs of the Association and the Horizontal Property Regime property;
(3) To designate and/or remove, subject to the terms and conditions of the Declaration relating to the professional management of the Horizontal Property Regime, the services of an agent, hereinafter sometimes called the "Managing Agent", to maintain, repair, replace, administer and operate the Horizontal Property Regime or any part thereof for all the Unit Owners upon such terms and for such compensation and authority as the Board of Directors may approve;
(4) To formulate policies for the administration, management and operation of the Horizontal Property Regime and the Common Elements;
(5) To adopt rules and regulations, with written notice thereof to all Unit Owners, governing the administration, management, operation and use of the Horizontal Property Regime property and the Common Elements, and to amend such rules and regulations from time to time;

(6) To provide for the maintenance, repair, and replacement of the Common Elements and Limited Common Elements as required by the Declaration, to make payments therefore, and to approve payment vouchers or to delegate such approval to the officers or Managing Agent. Notwithstanding this provision, the Unit Owner or Unit Owners benefitting from specific Limited Common Elements shall pay for the maintenance, upkeep, and repair of these Limited Common Elements and shall be responsible for maintaining and paying for fire, hazard, liability and other types of insurance such Unit Owner or Owners deems necessary to insure their interest in the Limited Common Elements benefitting their Unit and their Unit. The Owner or Owners of Unit 1 shown on the Plan recorded herein as Exhibit B shall be responsible for maintaining the Limited Common Elements designated on said Plan of "LCE-1". The Owner or Owners of Unit 2 on the Plan recorded herewith as Exhibit B shall be responsible for maintaining the Limited Common Elements designated on said plan as "LCE-2". In the event any Owner or Owners fails to properly maintain their portion of the Limited Common Elements, the Association may, at it discretion, assume such responsibility and, in such instance, the affected Unit Owner or Owners shall reimburse the Association for any expense incurred by the Association within ten (10) days of receipt of an invoice from the Association for such expense.

(7) To provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Horizontal Property Regime property and the Common Elements, and to delegate any such powers to the Managing Agent or any employees of the Managing Agent);

(8) To appoint committees of the Board and to delegate to such committees the Board's authority to carry out certain duties of the Board of Directors;

(9) To determine the Fiscal year of the Association and to change said fiscal year from time to time as the Board of Directors deems advisable;

(10) To fix the estimated annual budgets, and to provide the manner of assessing and collecting From Unit Owners the respective shares of such estimated expenses, as hereinafter provided;

(11) To enter into any lease agreement for lease for lease of premises suitable for use as guest or custodian apartments, upon such terms as the Board of Directors may approve;

(12) To borrow money for the purpose of repair or restoration of Common Elements without the approval of the members of the Association

(13) To secure insurance policies as required by the Declaration and in this regard, annually, to review the amounts of coverage afforded by such policy or policies. Notwithstanding this provision, the Association shall not be required to obtain any form or policy of insurance to provide coverage for any hazard related to any Limited Common Elements.

(14) To maintain or defend any action in any court or other proceeding on behalf of the Unit Owners which arises in connection with the Common Elements, including but not limited to condemnation or eminent domain actions;

(15) Unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of Unit Owners as expressed in resolutions duly adopted at

any annual or special meeting of Unit Owners;

(16) To exercise all other powers and duties of Unit Owners as a group referred to in the Horizontal Property Act, in the Declaration or these By-Laws.

(17) 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.

(b) Specifically, whenever in these By-Laws or in the Declaration the Association is given the power to take any action, it is the intention of such instruments that the Board of Directors shall act for the Association in all cases, except to the extent that it is expressly provided that action may be taken upon vote of the Unit Owners.

(c) Nothing in these By-Laws shall be considered to grant to the Board of Directors, the Association, or to the officers of the Association, any powers or duties which, by law, have been delegated to the Unit Owners.

7. Officers.

(a) The executive officers of the Association shall be a President, who shall be a Director and a Secretary who shall also be a board member, all of whom shall be elected annually by the Board of Directors and who may be removed by vote of the Directors at any meeting. The President shall not also be the Secretary. The Board of Directors may from time to time elect other officers to exercise such powers and duties as the Board shall find to be required to manage the affairs of the Association. Compensation, if any, of officers shall be fixed by the Board of Directors.

(b) The President shall be the Chief Executive Officer of the Association. He shall have all of the powers and duties which are usually vested in the office of president of an association, including, but not limited to, the power to appoint committees from among the members from time to time, as he may, in his discretion, determined appropriate, to assist in the conduct of affairs of the Association.

(c) The Secretary shall keep the minutes of all proceedings of the Directors and the members. He/She shall attend to the giving and serving of all notices to the members and Directors and other notices required by law. He/She shall keep the records of the Association and shall perform all other duties incident to the office of secretary of an association and as may be required by the Directors or the President.

(d) In the event the Declarant or its designee serves as any Officer of the Association, neither the Declarant nor its designee may be removed from office until Declarant has sold the four (4) Units in the Horizontal Property Regime.

8. Indemnification.

(a) To the extent not covered by insurance, the Association shall indemnify and hold harmless each of its directors and officers, each member of any committee appointed pursuant to the By-Laws of the Association, the Board of Directors and the Declarant, against all contractual and other liabilities to others arising out of contracts made by or other acts of such directors, Board, officers, committee members or Declarant, on behalf of the Unit Owners, or arising out of their status as directors, Board, officers, committee members or Declarant, unless any such contract or act shall have been made fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all

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

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

(2) any matter settled or compromised, unless the Board determines there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of his duties as such director, officer, Board, committee member, or Declarant.

(b) To the extent that the Declarant or a member of the Board of Directors or an officer of the Association or a member of any committee appointed pursuant to the By-Laws of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subparagraph (a) or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith

(c) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the person or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Paragraph 8.

(d) The Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Paragraph, provided, however, that the liability of any Unit Owner arising out of any contract made by or other acts of the directors, Board, officers, members of such committees, or Declarant, or out of the aforesaid indemnity in Favor of the directors, Board, officers, members of such committees, or Declarant shall be limited to such proportion of the total liability hereunder as said Unit owner's percentage of interest in the Common Elements, bears to the total percentage interest of all the Unit Owners in the Common Elements. Every agreement made by the directors, Board, officers, members of such committee Declarant or by the Managing Agent on behalf of the Unit owners shall provide that the directors, Board, officers, members of such committees, Declarant or the Managing Agent, as the case may be, are acting only as agents for the Unit owner and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements. The indemnification provided by this Paragraph 8 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board of Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to a person or entity who has ceased to be

Declarant or a member of the Board of Directors, officer of the Association or a member of such committee, and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of such person or entity.

9. Assessments.

(a) An annual assessment may be made every twelfth (12th) month or as otherwise determined by the Board, and, if made shall be payable in twelve (12) equal payments due on the first day of each month of the year for which the assessment is made. The Board shall provide the Unit Owners with a copy of the proposed Association budget at least twenty (20) days prior to the adoption of such budget. If an annual assessment is not made as required, an assessment shall be presumed to have been made in the same amount as the immediately preceding annual assessment. The initial assessment shall be fifty dollars ($50.00) per month per Unit.

(b) If a Unit Owner shall be in default in the payment of an installment upon an assessment, the Board of Directors may accelerate the remaining installments of the assessment upon notice thereof to the Unit Owner, and thereupon the unpaid balance of the assessment shall come due upon the date stated in the notice, but not less than ten (10) days after delivery thereof to the Unit Owner, or not less than twenty (20) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.

(c) In the event that during the course of any year it shall appear to the Board of Directors that the annual assessment, payable monthly, determined as aforesaid, is insufficient or inadequate to cover the estimated Common Expenses for the remainder of such year, then the Board of Directors shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be Furnished to each Unit Owner, and thereupon a supplemental assessment shall be made to each Unit Owner for his proportionate share of such supplemental budget, and such supplemental assessment shall be paid in a time and manner directed by the Board of Directors.

(d) The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the moneys of the Association shall be deposited. Withdrawal of moneys from such accounts shall be only by checks signed by such persons as are authorized by the Directors. The Directors may contract with a Managing Agent to provide that the Managing Agent shall collect assessments. The Unit Owners and other moneys of the Association and disburse Association Funds pursuant to the terms of such contract: provided, however, all employees of the Managing Agent handling or responsible for Association funds must be covered by fidelity bonds as set forth below in subparagraph (f). The signatures of two officers of the Association or in the event a Managing Agent is employed, the Signatures of at least one Board member and one management employee specified in the contract, shall be required to sign any check in excess of $1,000.00. All reserve funds of the Association shall be kept in a separate bank account and all checks written on such account shall be signed by at least two officers of the Board or the Managing Agent. If there is no Managing Agent, the signatures of two officers shall be sufficient.

(e) An audit of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the report shall be furnished to each member not later than one hundred twenty (120) days following the year for which the report is made.

(f) Fidelity bonds may be required by the Board of Directors from all persons

handling or responsible for Association funds in the event the Association accumulates more than $10,000.00 in funds in its accounts. The amount of such bonds shall be determined by the Directors, but shall be at least one-fourth (1/4) of the amount of the total annual assessments against members for Common Expenses plus the amount of the reserve account. The premiums on such bonds shall be paid by the Association. The Managing Agent shall be required to provide satisfactory evidence that all employees handling Association funds are protected by a bond naming the Association as the insured.

(g) The Board of Directors shall cause to be kept detailed and accurate records in chronological order of its receipts and expenditures affecting the Common Elements, specifying and itemizing the Common Expenses incurred. Payment vouchers may be approved in such manner as the Board of Directors may determine.

(h) The Board shall, upon receipt of ten (10) days written notice to the Association and upon payment of a reasonable fee, furnish any Unit Owner a statement of his accounts setting forth the amount of any unpaid assessment or other charges due and owing from such Unit Owner.

(I) No assessments whatsoever shall be paid by the Declarant.

10. Rules and Regulations.

The Directors are expressly empowered to adopt and promulgate, from time to time, reasonable rules and regulations governing the use of the Units and the common areas, including the imposition of penalties for violation thereof. All such rules and regulations shall be binding rules and regulations of the Association unless rejected by a resolution adopted at a meeting of the members or by a writing signed by members representing all of the votes of the Association. The Directors shall give written notice to all members of the adoption of any new rules and regulations or of the amendment of any existing rule or regulation.

11. Amendments.

These By-Laws may be amended in the following manner:

(a) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

(b) A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members of the Association. Directors and members not present in person or by proxy at the meetings to consider the amendment may express their approval in writing, providing such approval is delivered to a Board member or management agent prior to the meeting. Such approvals must be by all of the votes of the eligible voting membership of the Association.

(c) No amendment shall discriminate against any Unit Owner or against any Unit or class or group of Units unless the Unit Owners so affected shall consent. No amendment shall change any Unit nor the share in the Common Elements appurtenant to it, nor increase the Unit Owner's share of the Common Expenses, nor the method of assessment for Common Expenses, nor change the voting rights of members. unless the record owner of the Unit concerned and all record owners of liens thereon shall join in the execution of the amendment giving their written approval.

(d) A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective upon recording

in the Register's Office for Davidson County, Tennessee.

(e) The Bylaws may be amended until solely by the Declarant until it has sold or otherwise conveyed both Units. After the Declarant has sold both Units the by-laws may be amended by a vote of one hundred percent (100%) of the Unit Owners.

12. Parliamentary Rules.

Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meeting when not in conflict with the Declaration, the Charter or these By-Laws.

13. Definition of Terms.

The terms used in these By-Laws, to the extent they are defined therein, shall have the same definition as set forth in the Declaration. The term "member as used in these By-Laws, means "Unit Owner, as defined in the Declaration.

14. The Declarant may waive in writing any power, duty, or position it may have pursuant to these By-Laws.

15. Compliance with Statute.

These By-Laws are set forth to comply with Chapter 27 of Title 66, Tennessee Code Annotated, as it may be amended from time to time. In case any of these By-Laws conflict with the provisions of said statute, it is hereby agreed and accepted that the provisions of the statute will apply.

The foregoing By-Laws are hereby adopted as the By-Laws of the Utah Avenue Townhome Owner's Association, Inc. by the undersigned as of November 18th, 2009.

PRESIDENT - Russell Schmidt

SECRETARY - Ryan Talbert

STATE OF Minnesota
COUNTY OF Ramsey

Before me, the undersigned a Notary Public of the State and County aforesaid, personally appeared, Russell Schmidt, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath acknowledged himself to be President of the Utah Avenue Townhome Owner's Association, Inc., the within named bargainor, a corporation, and who executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President of the Corporation.

Witness my hand and official seal at St. Paul, Ramsey County, Minnesota, this 18th day of November, 2009.

Notary Public

My Commission Expires: 1-31-09

CHRISTIE E SCHMIDT
Notary Public
Minnesota
My Comm. Expires Jan 31, 2010

## EXHIBIT D

MAINTENANCE RESPONSIBILITY - SUMMARY

| | ASSOCIATION | UNIT OWNER |
|---|---|---|
| Air conditioner \ furnace \ water heater | | X |
| Kitchen appliances | | X |
| Water leaks (roof, windows) | | X |
| Structural integrity of each unit | | X |
| Common Ground | X | |
| Driveways | | X |
| Front and Rear Steps | | X |
| Exterior doors (repairs \ replacements) | | X |
| Interior maintenance | | X |
| Electrical connections and wiring | | X |
| Mailboxes | | X |
| Plumbing (outside wall to meter) | | X |
| Plumbing (interior lines) | | X |
| Painting (exterior - all surfaces) | | X |
| Patio\Balcony | | X |
| Roof \ gutter (repair \ replace) | | X |
| Sidewalks | | X |
| Siding \ exterior trim (repair \ replacement) | | X |
| Trees (Common Area) | | X |
| Lawn mowing \ tree and scrub trimming | | X |
| Garbage pick-up | | X |
| Exterior lighting | | X |
| Windows \ sliding doors \ screens\doors | | X |
| Anything not shown on this chart | X | |

## *EXHIBIT F*

THIS INSTRUMENT WAS PREPARED BY:
Robert J. Notestine III
Attorney at Law
4515 Harding Pike, Suite 315
Nashville, TN 37205

ATTORNEY'S CERTIFICATE

This document is intended to serve as the attorney's opinion which is required under the terms of Tennessee Code Annotated, Section 66-27-201 et seq.. The undersigned, Robert J. Notestine III, an attorney licensed to practice law in the State of Tennessee, hereby declares that upon the proper recording of this certificate and the following additional documents, all legal requirements for the creation of a Horizontal Property Regime development under the terms of the Horizontal Property Act, Tennessee Code Annotated, Section 66-27-201 et seq. will have been met.

1. The Declaration establishing the Utah Avenue Townhomes, a Horizontal Property Regime.
2. By-laws of the Utah Avenue Townhome Owner's Association, Inc., an owner's corporation.
3. The Plat for the Utah Avenue Townhomes, a Horizontal Property Regime, attached as Exhibit B hereto.
4. The Charter of the Utah Avenue Townhome Owner's Association, Inc., a townhome owner's corporation.

Witness my hand this the 18th day of November, 2009.

ROBERT J. NOTESTINE III

STATE OF TENNESSEE}
COUNTY OF DAVIDSON}

Personally appeared before me, the undersigned, a notary public in and for said County and State, the within named Robert J. Notestine III, attorney at law, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand this the 18th day of November, 2009.

Notary Public

~~My Commission Expires~~

My Commission Expires:

My Commission Expires 01/09/2012

RYAN HUNTER ALSUP
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY

## EXHIBIT D

MAINTENANCE RESPONSIBILITY - SUMMARY

| | ASSOCIATION | UNIT OWNER | |
|---|---|---|---|
| Air conditioner \ furnace \ water heater | | X | |
| Kitchen appliances | | X | |
| Water leaks (roof, windows) | | X | |
| Structural integrity of each unit | | X | |
| Common Ground | | | X |
| Driveways | | X | |
| Front and Rear Steps | | X | |
| Exterior doors (repairs \ replacements) | | X | |
| Interior maintenance | | X | |
| Electrical connections and wiring | | X | |
| Mailboxes | | X | |
| Plumbing (outside wall to meter) | | X | |
| Plumbing (interior lines) | | X | |
| Painting (exterior - all surfaces) | | X | |
| Patio\Balcony | | X | |
| Roof \ gutter (repair \ replace) | | X | |
| Sidewalks | | X | |
| Siding \ exterior trim (repair \ replacement) | | X | |
| Trees (Common Area) | | X | |
| Lawn mowing \ tree and scrub trimming | | X | |
| Garbage pick-up | | X | |
| Exterior lighting | | X | |
| Windows \ sliding doors \ screens\doors | | X | |
| Anything not shown on this chart | | | x |