INSTRUMENT PREPARED BY:
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Suite 120
Brentwood, TN 37027
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**Name & Address of New Owner:**
Luehrsen Construction, LLC
119 47TH Avenue North
Nashville, TN 37209

**Send Tax Bills To:**
Paul Luehrsen
119 47TH Avenue North
Nashville, TN 37209

BILL GARRETT, Davidson County
Trans:T20120067669 DEEDMAST
Recvd: 09/10/12 11:24 45 pgs
Fees:227.00 Taxes:0.00
20120910-0081780

# DECLARATION ESTABLISHING DAKOTA VILLAGE, A TOWNHOUSE PLANNED UNIT DEVELOPMENT
(Horizontal Property Regime With Private Elements)

THIS Declaration of Protective Covenants, Conditions and Restrictions for Dakota Village, a Townhouse Planned Unit Development ("Horizontal Property Declaration"), a Horizontal Property Regime with Private Elements, is made and entered into by **LUEHRSEN CONSTRUCTION COMPANY, LLC,** a Tennessee limited liability company (collectively "Declarant"), BEING THE Owner of the Developmental Property.

**WITNESSETH:**

**WHEREAS,** Declarant is the legal title holder of certain real estate located in the County of Davidson and State of Tennessee, which real estate is more fully described in Exhibit "A" attached hereto. Being part of the same property conveyed to Luehrsen Construction, LLC, a Tennessee Limited Liability Company by deed of record in Instrument #20120620005950 of said Register's Office.

**WHEREAS,** Declarant will develop the Development Property as a residential community and establish and maintain thereon one or more single-family residential townhouses;

**WHEREAS,** Declarant desires to provide for the protection and preservation of the values, desirability and character of the Development Property;

**WHEREAS,** Declarant desires to provide a system of administration, operation and maintenance of the Development Property;

**WHEREAS,** Declarant, being the Owner of the Development Property, desires to submit the Development Property, together with all buildings, structures, improvements and other permanent fixtures of any kind whatsoever hereafter constructed thereon, and all rights and privileges belonging or pertaining thereto, to the provisions of this Horizontal Property Declaration and the Horizontal Property Act of the State of Tennessee codified at Tenn. code Ann. §66-27-101 through 123 (the "Act") in order to establish and construct thereon a Townhouse Planned Unit Development, a horizontal property regime with Private Elements to be known as Dakota Village, consisting of residential dwellings ("Units"), together with certain buildings, structures, driveways, amenities, improvements and other permanent fixtures thereon as further described on Exhibit B attached hereto;

**WHEREAS,** Declarant presently contemplates that the Units comprising the Townhouse Planned Unit Development will consist of different floor plans each having their own Private Elements and Limited Common Elements appurtenant to and serving such Units; and

**WHEREAS,** Declarant desires to establish for its own benefit and for the benefit of all future Owners and Occupants of the Development Property or any portion thereof, certain rights, privileges and easements in, over and upon the Development Property, and to this end, desires to subject the Development Property to certain mutually beneficial covenants, restrictions, obligations, easements, charges and liens for the purpose of enhancing and protecting the value, desirability and attractiveness as well as the proper use, conduct and maintenance of the Development Property or any part thereof.

**NOW THEREFORE,** Declarant, as the legal title holder of the real estate hereinbefore described in Exhibit "A", and for the purposes above set forth, makes the following declarations and submissions as part of this Horizontal Property Declaration:

## PARAGRAPH I
## DEFINITIONS

The following words when used in this Horizontal Property Declaration or any Supplemental Instrument hereto shall have the following meanings and shall amend the definitions set forth in this Horizontal Property Declaration.

"Act" shall mean and refer to the "Horizontal Property Act" of the State of Tennessee codified at Tennessee Code Annotated, Section 66-27-101 through 123.

"Assessment" means that portion of the common expenses which is to be paid by a particular Unit Owner.

"Association" means "Dakota Village Homeowners' Association, Inc.", a Tennessee nonprofit corporation.

"Board" means the Board of Directors of the Association.

"Buildings" shall mean those structures located on the Property and containing the Units.

"Bylaws" means the Bylaws of the Association described as Exhibit "C". For purposes of the Act, all provisions contained in the body of this Horizontal Property Declaration dealing with the administration and maintenance of the Property shall be deemed to be part of the Bylaws.

"Common Elements" shall mean and refer to all of the Development Property comprising the Townhouse Planned Unit Development, except for the Units and the Private Elements and Limited Common Elements appurtenant thereto. All Common Elements shall be exclusively owned by the Association for the use and benefit of every Unit Owner, who shall be a co-owner of the Association as set forth in Tenn. Code Ann. §66-27-102(15). Without limiting the generality of the foregoing, Common Elements shall include the following, except as otherwise herein provided or stipulated:

A) The land, devices, improvements, structures, installations or any other elements or part of the Development Property that are rationally for the common use and benefit of all Unit Owners or necessary to the existence, upkeep and safety of the Townhouse Planned Unit Development established by this Horizontal Property Declaration.

B) All foundations, roofs, exterior walls, bearing walls and columns that are common to two (2) or more Units.

C) All other elements of any Building desirable or rationally of common use or necessity to its existence, upkeep or safety.

D) All compartments or installations of central services such as power, light, gas, water, sewer, telephone, cable television, including master meters, and the like on the Development Property that are common to or service two (2) or more Units.

E) All driveways, access roads, walkways, sidewalks, parking areas, open spaces and entrances and exits for ingress and egress to and from and over and across the Development Property and to and from the Units that are common to or service two (2) or more Units.

F) All improvements, devices or installations existing for the common use and benefit of the Unit Owners.

G) Any common walls or fences.

"Development Property" shall mean and refer to the real property shown and described on Exhibit A attached hereto and made a part hereof.

"Horizontal Property Declaration" shall mean and refer to this declaration of Protective Covenants, Conditions and Restrictions for Dakota Village, a Townhouse Planned Unit Development (a horizontal property regime with Private Elements) applicable to the Development Property and all subsections thereof and recorded in the Register's Office for Davidson County, Tennessee, as may be amended from time to time.

"Limited Common Elements" shall mean and refer to Common Elements and other fixtures lying partially within and partially outside the designated boundaries of a Unit, any portion thereof serving any Unit or Units to the exclusion of the other Units, the enjoyment, benefit and use of which is reserved exclusively to the Unit Owner(s) of such Unit(s) pursuant to this Horizontal Property Declaration, any Plat or Site Plan or otherwise designated as such by the Board of Directors. Without limiting the generality of the foregoing, such Limited Common Elements include pipes, ducts, chutes, flues, wiring, conduit, walls, partitions, columns, utility meter, water heater, condensing units, HVAC equipment, shutters, awnings, window boxes, window frames and screens, door and door frames, window and door glass panes, doorsteps, stoops as well as porches, patios and balconies, if any. As set forth in Tenn. Code Ann. §66-27-102(12), Limited Common Elements located upon Private Elements shall be deemed Private Elements. Any improvements made on the Limited Common elements shall be deemed as a Private Element and any liability shall be with the owner of the Private Element.

"Private Element" shall mean and refer to the lot area upon which a Unit is located and the improvements located thereon as further described on Exhibit B attached hereto and made a part hereof, exclusive of any Common Elements located thereon. The Private Elements appurtenant to each Unit include the lot area beneath the Unit as bound by the perimeter of the Unit as further shown and described on Exhibit B. Exclusive ownership and use of the Private Elements for each Unit is reserved to such Unit. As set forth in Tenn. Code Ann. §66-27-102(12), Limited Common Elements located upon Private Elements shall be deemed to be Private Elements.

"Site Plan" or "Plat" shall mean and refer to the diagram, plan, survey or plat of the Development Property presently submitted as well as any other diagrams, plans, surveys or plats as may be submitted to this Horizontal Property Declaration and the provisions of the Act, which show the number, area and location of each Unit and other data necessary for their identification. The current Site Plan for Dakota Village, as may be amended from time to time, is attached hereto as Exhibit B, and made a part hereof. No dedication to the public is intended by recording any Site Plan with this Horizontal

Property Declaration, except as otherwise provided by Declarant.

"Dakota Village" means the real estate herein of which a portion has been designated for separate ownership into Units and the remainder of which is designated for common ownership."

"Limited Common Area" or "Limited Common Elements" means all elements contiguous to and serving exclusively a single Unit as an appurtenance thereto, the enjoyment, benefit, or use of which is reserved to the lawful Occupants of such Unit either in this Horizontal Property Declaration, on the Plat or by the Board.

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

"Horizontal Property Declaration" means this instrument, by which the Property is submitted to the provisions of the Act, as hereinafter provided, as amended from time to time, including all Exhibits hereto.

"Mortgage" means a valid recorded first deed of trust securing an indebtedness owed to on individual, lending institution, or any other entity.

"Mortgagee" means the beneficiary of any deed of trust who has a valid and enforceable security interest in the Property.

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

"Parcel" or "Plat" means the plat of survey submitted to the provisions of the Act showing the number and/or letter of each Unit, expressing its area, location, and other data necessary for identification. Said plat of the project is attached hereto as Exhibit C and shall be amended from time to time to incorporate additional Buildings and Units.

"Property" means all the land, property, and space comprising the Parcel, and all improvements and structures erected, constructed, or contained therein or thereon, including the Buildings and all easements, rights, and appurtenances belonging thereto, and any furniture; furnishings, fixtures, and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.

"Record" or "Recording" refers to the record or recording in the office of the Register of Deeds in Davidson County, Tennessee.

"Unit" means and includes the lot area upon which a unit is located and the improvements located thereon, which shall include the slab or foundation upon which the building sits, the interior finished surfaces of its perimeter walls and ceiling, and the air space so encompassed, and for which fee simple ownership and exclusive use is reserved to that Unit only. Each Unit is shown by number, letter, or a combination of letter and number designation on Exhibit B. Any Unit may be jointly or commonly owned by more than one person. Mechanical equipment and appurtenances located within or adjacent to any Unit and designed to serve only that Unit, including but not limited to, heating and air conditioning equipment, appliances, plumbing, electrical wiring, fixtures, and the like shall be considered Private Elements and shall be part of said Unit.

"Unit Owners", means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit and of the undivided interest in the Common Elements appurtenant thereto.

## PARAGRAPH II
## SUBMISSION OF PROPERTY TO THE ACT

Establishment. Declarant hereby submits and subjects the Development Property to the provisions of the Horizontal Property Act of the State of Tennessee codified at Tenn. Code Ann. § 66-27-101 through 123 and this Horizontal Property Declaration, and hereby establishes a Townhouse Planned Unit Development to be known as Dakota Village pursuant to Tenn. Code Ann. §66-27-103(b), and hereby declares that the Development Property shall be held, sold and enjoyed to the easements, restrictions, covenants and conditions of this Horizontal Property Declaration, which are the purposes of protecting the value and desirability of the Development Property and which shall run with the land and be binding upon and inure to the benefit of all parties now or hereafter having any right, title or interest in the Development Property or any part thereof.

Site Plan. The Site Plan attached hereto as Exhibit B and incorporated herein sets forth the numbers, areas and location of each Unit, the Private Elements appurtenant thereto as well as any other data necessary for their identification as required by the Act.

Units. Each Unit is numbered as shown on the Site Plan and the legal description of each Unit shall consist of the identifying number or symbol of each Unit and its Private Elements as shown and further described on the Site Plan attached hereto as Exhibit B. Every deed, lease, mortgage, deed of trust or other instrument shall legally describe a Unit by its identifying number as shown on the Site Plan and every 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, plan, court decree or otherwise, subdivide or in any other manner cause his Unit or its Private Elements to be separated into any tracts or parcels different from the whole Unit and its Private Elements as shown on the Site Plan.

## PARAGRAPH III

## PLAT

The plat or survey of the Property is attached hereto as Exhibit B and sets forth the numbers, areas, locations, and other data, as required by the Act. The Plat may be amended or modified solely by Declarant by additional surveys and plats showing subdivision of Units and/or annexation of additional phases or otherwise, subject to the limitations and requirements imposed by the Act.

## PARAGRAPH IV

## UNITS; RESTRICTION ON USE

1. The legal description of each Unit shall consist of the identifying letter and/or number of such Unit as shown by corresponding unit letter and/or number on the plat as heretofore referenced. Every deed, lease, mortgage, deed of trust, or other instrument shall legally describe a Unit by its corresponding unit identifying letter and/or number as shown on the plat and every such description shall be deemed good and

sufficient for all purposes, as provided in the Act. Except as allowed by the Act, no Unit Owner shall, by deed, plat, court decree, or otherwise, subdivide or in any other manner cause a Unit to be separated into any units different from the whole Unit as shown on the plat. The aforementioned prohibition on subdividing shall not be applicable to Declarant as to any Unit Declarant may own; however, in exercising such right, Declarant shall be subject to the limitations and requirements imposed by the Act.

2. A Unit shall be used only for residential use.

Notwithstanding the Development Rights and Special Declarant Rights reserved, this Paragraph IV shall not be subject to amendment unless by unanimous approval of all Unit Owners.

## PARAGRAPH V
## OWNERS' ASSOCIATION

1. Owners' Association and Administration and Operation of the Property. There has been or will be formed an Association having the name "Dakota Village Homeowners' Association, Inc.", a Tennessee nonprofit corporation, which Association shall be the governing body for all of the Unit Owners. The Association shall be operated to provide for the maintenance, repair, replacement, administration, operation, and care of the Property as provided in the Act, this Horizontal Property Declaration and Bylaws. The Bylaws for the Association shall be the Bylaws attached to this Horizontal Property Declaration as Exhibit C and made a part hereof. The Board of Directors of the Association shall be elected and shall serve in accordance with the provisions of the Bylaws. The fiscal year of the Association shall be determined by the Board within the confines of applicable law, 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 this Horizontal Property Declaration and Bylaws. Each Unit Owner shall be a member of the Association so long as such Owner is a Unit Owner. A Unit Owner's membership shall automatically terminate when such Owner

ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall automatically succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of (he Association shall be divided among the respective Unit Owners, with one (1) vote granted to each Unit.

2. 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 3 below. The Board shall require that such Managing Agent have fidelity bond coverage on its employees handling Association funds.

3. Reserved.

4. Use by Developer. During the period of sale by the Developer of any Units, the Developer, and the Developer's agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access, ingress to and egress from the Buildings and Property as may be required for purposes of sale of the Units. While the Developer owns any of the Units and until each Unit sold by it is occupied by the purchasers, the Developer 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.

5. 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, personal and legal representatives, successors and assigns in accordance with, and as provided in, the Articles of Incorporation of the Association and Bylaws.

6. Interest of Association in Common Elements. Ownership of the Common Elements shall be vested in the Association.

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

## PARAGRAPH VI
## OWNERSHIP 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 Horizontal Property Declaration consented to in writing by the Unit Owners, in accordance with the requirements hereinafter contained. Said ownership interest shall be an undivided interest, and the undivided membership interests in the Association shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in the Association corresponding to said Unit. The undivided percentage of ownership in the Association corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit.

## PARAGRAPH VII
## USE OF COMMON ELEMENTS

Except as hereinafter set forth, each Unit Owner shall have the right to use the Common Elements, except the Limited Common Elements, in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to

use the Common Elements shall extend to each Unit Owner, and such Owner's agents, servants, tenants, family members, customers, invitees and licensees. However, each Unit Owner shall have the right to the exclusive use and possession of the Private Elements attributable to the Unit and the right to exclusive use of the Limited Common Elements contiguous to and serving such Unit alone. Such rights to use the Common Elements shall be subject to and governed by the provisions of the Act, Horizontal Property Declaration, Bylaws and any rules and regulations established by the Association.

## PARAGRAPH VIII
## ASSESSMENTS

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

however, any lien encumbering a Unit as above described shall not be affected by transfer of a Unit.

The Developer shall not be required to expend from its own funds any sums of money for maintenance, improvements, or any other expenses of the administration of the Common Elements, and no Unit owned by the Developer shall be assessed for common expenses, or otherwise, until such time as construction of such Unit is completed and occupied by a tenant of Developer, or is sold by the Developer.

2. Reserved.

3. Deed of Trust Protection. The Lien for common expenses payable by a Unit Owner shall be subordinate to the lien of a recorded 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 beneficiary thereunder either takes possession of the Unit encumbered thereby, accepts a conveyance of any interest therein (other than as security) or forecloses on its deed of trust.

4. Reserved.

## PARAGRAPH IX

## DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS RESERVED

1. Development Rights Reserved to Declarant.

Declarant shall have the following Development Rights:

A) Reserved.

B) The right to create Units, Common Elements and Limited Common Elements within Dakota Village provided that in exercising such right, Declarant shall comply with the applicable provisions of the Act

C) The right to allocate Limited Common Elements and expenses thereof to specific Units other than those Limited Common Elements specifically identified in Paragraph I hereof under the definition of Unit.

D) Reserved.

E) Reserved.

F) The right to withdraw Real Estate from Dakota Village.

The exercise of any of the aforesaid Development Rights shall be in compliance with all applicable provisions of the Act.

2. Special Declarant Rights Reserved.

Declarant shall have the following Special Declarant Rights:

A) The right to complete improvements indicated on plats and plans filed with this Horizontal Property Declaration and in accordance with the Act.

B) The right to exercise any of the Development Rights as hereinabove stated.

C) The right to maintain sales offices, management offices, signs advertising Dakota Village, and sales models pursuant to the Act."

D) The right to use easements through the Common Elements for the purpose of making improvements within Dakota Village or within real estate which may be added to Dakota Village pursuant to the Act

E) Reserved.

F) Reserved.

G) The right to appoint or remove any officer of the Association or any member of the Board of Directors during any period of Declarant Control as hereinafter stated.

The exercise of any of the aforesaid Special Declarant Rights shall be in compliance with all applicable provisions of the Act.

## PARAGRAPH X

## DECLARANT CONTROL PERIOD

The right of the Declarant in Paragraph IX 2(G) of this Horizontal Property Declaration to appoint or remove any officer of the Association or any member of the Board of Directors (the "Declarant Control Period") shall continue in favor of the Declarant as long as Declarant owns at least one (1) of the Units; provided, however, such Declarant Control Period may terminate sooner under the provisions of T.C.A. § 66-27-403 (c)(1) and (d) of the Act, incorporated herein by reference.

## PARAGRAPH XI

## PARTITION OR DIVISION PROHIBITED

The common and/or limited common areas and facilities shall remain undivided and no Unit Owner shall bring any action for partition or division.

The undivided interest in the common areas and facilities shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

## PARAGRAPH XII

## COMPLIANCE

Each Unit Owner shall comply with the provisions of this Horizontal Property Declaration, the Bylaws, decisions, and resolutions of the Association or its representatives as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due for damages, or for injunctive relief.

## PARAGRAPH XIII

## WAIVER OF USE PROHIBITED

No Unit Owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of his Unit.

## PARAGRAPH XIV

## PERSONS AND CONVEYANCES SUBJECT HERETO

All present or future Unit Owners, tenants, future tenants, or any other person that might use the facilities of the project in any manner, are subject to the provisions of this Horizontal Property Declaration and the mere acquisition or rental of any of the Units of the project or the mere act of occupancy of any of said Units shall signify that the provisions of this Horizontal Property Declaration are accepted and ratified.

Any sale or lease of any Unit shall be subject to the terms and conditions of this Horizontal Property Declaration and Bylaws.

## PARAGRAPH XV

## DESTRUCTION AND REPAIR

If the Property subject to the plan of Dakota Village ownership is totally or substantially damaged or destroyed, then the repair, reconstruction, or disposition of the Property shall be the responsibility of the Unit Owner

## PARAGRAPH XVI

## LIEN FOR ASSESSMENTS

Where a mortgagee or other purchaser of a Unit obtains title by reason of foreclosure, such acquirer of title, his successors, or assigns, shall not be liable for assessments by the Association which became due prior to the acquisition of title by such acquirer, it being understood, however, that the above shall not be construed to prevent the Association from filing and claiming liens for such assessments and enforcing same as provided by law, and that subject to Paragraph VIII, such assessment liens shall be subordinate to such mortgage.

## PARAGRAPH XVII

## INSURANCE AND DAMAGE

The Unit Owners may obtain insurance for the Property, including the Units, Private Elements, Limited Common Elements, and the Common Elements, including 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 Limited Common Elements, the Common Elements, and the Buildings in the Association.

The Board shall not be responsible for the repair, replacement or restoration of any damage whatsoever to any Unit, the Limited Common Elements, or the Common Elements.

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 a director or officer of the Association, or a member of such a committee.

Each Unit Owner shall also be responsible for obtaining his own insurance on the contents of such owner's Unit, as well as additions and improvements thereto, decorations, furnishings and personal property therein, and personal property stored elsewhere on the Property.

## ARTICLE XVIII
## MAINTENANCE, REPAIRS, AND REPLACEMENT

1. 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 any porch, deck and/or balcony which is a part of their Unit and all exterior glass, windows, including storm windows, screens, and doors, including storm doors. Each Unit Owner shall also be responsible for the expenses for the maintenance, repair or replacement of Private Elements, the Limited Common Elements, and the Common Elements that are appurtenant to the Unit.

2. Obligations of Association. The Association shall not be responsible for maintenance of repairs or replacements to the Units, the Limited Common Elements, or the common Elements.

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

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

## ARTICLE XIX
## ALTERATIONS, ADDITIONS OR IMPROVEMENTS

Any Unit Owner may make 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.

## ARTICLE XX
## ENCROACHMENTS AND EASEMENTS

If any portions of the Common Elements shall actually encroach upon any Unit or Private Elements, or if any Unit or Private Elements shall actually encroach upon any

portions of the Common Elements, or if any Unit or Private Elements shall actually encroach upon another Unit or Private Elements, as the Common Elements, Units and Private Elements are shown by the Plat, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved, to the extent of such encroachments, so long as the same shall exist. The Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the horizontal property regime.

## ARTICLE XXI
## AMENDMENTS

1. Reserved.

2. Other Amendments. Except as specifically stated elsewhere herein, and except for this Section, any provisions of this Horizontal Property Declaration may be changed, modified or rescinded by an instrument in writing, setting forth such change, modification, or rescission, signed and acknowledged by all Unit Owners, 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 that notice of the change to this Horizontal Property Declaration has been mailed by certified mail to all lien holders.

However, if the Act, this Horizontal Property 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 Horizontal Property Declaration, then any instrument changing, modifying, or rescinding any provision of this Horizontal Property Declaration with respect to such action shall be signed by all Unit Owners or all lien holders or rescission, whether accomplished under the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the Register's Office for Davidson County, Tennessee; provided, however, that no provision in this Horizontal Property Declaration may be changed, modified, or rescinded so as to conflict with the provisions of the Act.

Notwithstanding the preceding amendment requirements, the Declarant shall have the authority to amend this Horizontal Property Declaration during the three (3) years following recordation of this Horizontal Property Declaration or until all of the Units in the development have been deeded from Declarant, whichever first occurs.

## ARTICLE XXII
## MISCELLANEOUS PROVISIONS

1. Remedies. In the event of any violation of the provisions of the Act, this Horizontal Property Declaration, Bylaws or rules and regulations of the Board or Association by any Unit Owner (either by the Unit Owner's own conduct or by the conduct of any other Occupant of such Owner's Unit) the Association, or its successors or assigns, or the Board, or its agent, shall have each and all of the rights and remedies which may be provided for in the Act, this Horizontal Property Declaration, Bylaws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to sell the Unit through judicial process as provided hereinbefore, or for any combination of remedies, or for any other relief all expenses of the Board in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of ten percent (10%) 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 Owner's Unit or located elsewhere on the Property, provided, however, that such lien shall subordinate to the

lien of a recorded 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 deed of trust beneficiary either takes possession of the Unit, accepts a conveyance of any interest therein (other than as a security) or files suit to foreclose its deed of trust. In the event of any such default by any Unit Owner, the Board and the manager or Managing Agent, if so authorized by the Board, shall have the authority to correct such default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board. This paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of record of deeds of trust against Units.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board the right, in addition to any other rights provided for in this Horizontal Property 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.

If any Unit Owner (either by such Owner's conduct or by the conduct of any other occupant of his Unit) shall violate the Act, or any of the covenants or restrictions or provisions of this Horizontal Property Declaration or the regulations adopted by the Board, and if such default or violation shall continue for fifteen (15) days after notice to the Unit Owner in writing from the Board, or shall occur repeatedly during any fifteen (15)

day period after such written notice or request to cure such violation from the Board, then the Board shall have the power to issue to said defaulting Owner a notice in writing terminating the rights of the said defaulting Owner to continue as a Unit Owner and to continue to occupy, use or control such Owner's Unit, and thereupon an action in equity may be filed by the Board against said defaulting Owner for a decree of mandatory injunction against such defaulting Owner or Occupant, or in the alternative, for a decree declaring the termination of said defaulting Owner's right to occupy, use or control the Unit owned by him on account of said violation, and ordering that all the right, title and interest of said defaulting Owner in the Property shall be sold (subject to any existing deed of trust) at a judicial sale upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the said defaulting Owner from reacquiring such Owners interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against said defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to said defaulting Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Unit and the Unit Owner's corresponding percentage of ownership in the Common Elements, and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide that the purchaser shall take the interest in the Unit ownership sold subject to this Horizontal Property Declaration.

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 fifteen (15) days, the Board shall have the power and authority to place such Unit Owner's name on a list of delinquent Unit Owners, which list may be posted at a place designated by the Board for notices. Any aggrieved Unit Owner shall also have all rights of action available in law or equity should another Unit Owner, or the Association, fail to comply with the requirements of

this Horizontal Property Declaration, Bylaws, or rules and regulations of the Association.

2. Severability. If any provision of this Horizontal Property 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 Horizontal Property 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 Horizontal Property Declaration or the Bylaws shall be construed as if such invalid part was never included therein.

3. Captions, Number, and Gender. The captions used herein are for reference purposes only and shall not limit or broaden the meaning of any section. When used herein, the singular shall include the plural, the plural the singular, and the use of one gender shall apply to any gender.

DECLARANT:

LUEHRSEN CONSTRUCTION, LLC

By: _____
Paul Luehrsen, Chief Manager

STATE OF TENNESSEE

COUNTY OF DAVIDSON

Before me, the undersigned authority of the state and county mentioned, personally appeared **PAUL LUEHRSEN,** with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Chief Manager of Luehrsen Construction, LLC, the within named bargainor, a limited liability company, and that as such Chief Manager executed the foregoing Instrument for the purpose therein contained, by personally signing the name of the limited liability company.

Witness my hand and seal this 10 day of SEPTEMBER, 2012.

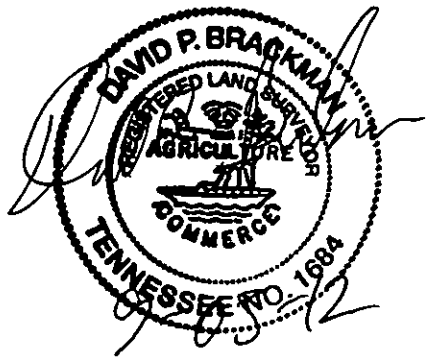
Notary Public

My Commission Expires:
MAY 5, 2015

THOMAS NESBITT, JR
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

## EXHIBIT A

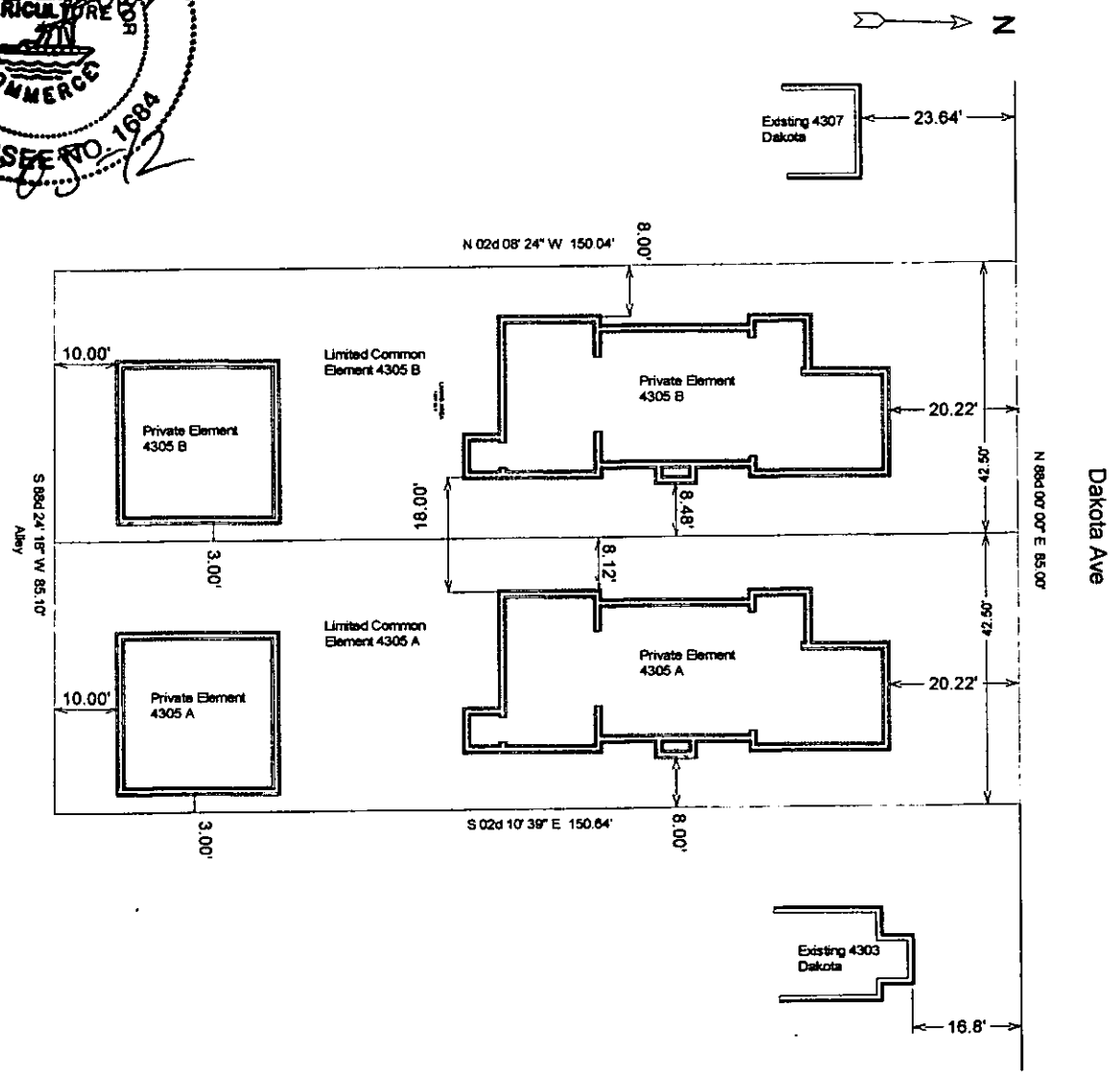
Land in Davidson County, Tennessee, being the Westerly 475 feet of Lot 206 and the easterly 37.5 feet of Lot 208, Block 11, on the plan of Charlotte Park Addition of record in Plat Book 57, page 103, Register's Office, Davidson County, Tennessee.




Brackman Land Surveying
David P. Brackman, RLS
1707 Gale Lane
Nashville, TN 37212
(615) 476-8107
dbrack@bellsouth.net

Plot Plan
4305 Dakota
Nashville, TN

PREPARED FOR:
Luehrsen Construction LLC




No Scale

Exhibit "B"

## EXHIBIT C TO HORIZONTAL PROPERTY DECLARATION

# BY-LAWS OF
# DAKOTA VILLAGE HOMEOWNERS' ASSOCIATION, INC.

## ARTICLE I
### Members (Unit Owners)

**Section 1.** **Eligibility.** The members of Dakota Village Homeowners' Association, Inc., a Tennessee not-for-profit corporation, shall consist of the Unit Owners of the property known as 4305 Dakota Avenue located at Nashville, Davidson County, Tennessee (the "Property"). If a Unit Owner is a trust, then the member shall be a beneficiary of such trust, and if a Unit Owner or such a beneficiary is a corporation or partnership, the member may be an officer, partner or employee of such Unit Owner or beneficiary.

**Section 2.** **Succession.** The membership of each Unit Owner shall terminate when he ceases to be a Unit Owner, and upon the sale, transfer, or other disposition of his ownership interest in the Property, his membership in the Association shall automatically be transferred to the new Unit Owner succeeding to such ownership interest.

**Section 3.** **Regular Meetings.** The first regular meeting of the Unit Owners (the "First Meeting") may be held, subject to the terms hereof on any date, at the option of the Board; provided, however, that the First Meeting shall be held not less than ten (10) days, nor more than one hundred twenty (120) days after the Developer has sold and delivered deeds for both of the Units. Subsequent to the First Meeting there shall be a regular annual meeting of Unit Owners held each year within fifteen (15) days of the anniversary of the First Meeting. All such meetings of Unit Owners shall be held at such place in Davidson County, Tennessee, and at such time as specified in the written

notice of such meeting which shall be delivered to both Unit owners at least ten (10) days prior to the date of such meeting.

**Section 4.** **Special Meetings**. Special meetings of Unit Owners may be called by the President or by a majority of the Directors of the Association, or by all Unit Owners entitled to vote at such meeting. Special meetings shall be called by delivering written notice to all Unit Owners not less than ten (10) days prior to the date of the meeting, stating the date, time and place of the special meeting and the matters to be considered.

**Section 5.** **Delivery of Notice of Meeting**. Notices of meetings shall be delivered either personally or by mail to Unit Owners at the addresses given to the Board by Unit Owners for such purpose, or to a Unit Owner's unit if no separate address for such purpose has been given to the Board.

**Section 6.** **Voting**. Each Unit shall have one (1) vote. If any Unit Owner consists of more than one (1) person, the voting rights of such Unit Owner shall not be divided, but shall be exercised as if the Unit Owner consisted of only one (1) person in accordance with the proxy or other designation made by the persons constituting such Unit Owner. In the event of disagreement among such persons and an attempt by two (2) or more of them to cast such vote, such persons shall not be recognized, and such vote shall not be counted. Developer may exercise the voting rights with respect to Units owned by it. In the event of a tie vote of Unit Owners while Developer is an owner of a Unit or Units, the Developer shall have an extra vote to break the tie. No Unit Owner who is in default in the payment of his assessments hereunder shall be entitled to exercise his right to vote until he has cured such default. A Unit Owner shall be deemed to be in default if he has not paid his assessments to the Board, or its agent, within fifteen (15) days after the due date thereof. A Unit Owner may protest the amount of the assessment, but it still must be paid during the pendency of his protest to the Board.

**Section 7.** **Quorum**. A quorum of Unit Owners for any meeting shall be constituted by Unit Owners represented in person or by proxy and holding both votes entitled to be cast at such meeting.

## ARTICLE II

## Board of Directors

**Section 1.** **Number. Election and Term of Office.** The Board of Directors of the Association (referred to in the Horizontal Property Act of the State of Tennessee as the "board of administrators" and sometimes referred to herein as the "Board") shall consist of two (2) members (hereinafter referred to as "Directors"). Directors shall be elected at the regular annual meeting of Association members by the vote of Unit Owners, except that until such time as the First Meeting of members is held, the Directors (hereinafter called "members of the First Board") shall be appointed by Developer. Those candidates for election as Director receiving the greatest number of votes cast either in person or by proxy at the meeting shall be elected. Every Director, except for members of the First Board, shall hold office for the term of two (2) years and until his successor shall be elected and qualified. At the first regular annual meeting, the members shall elect one (1) Director for a term of one (1) year; one (1) Director for a term of two (2) years. At each annual meeting thereafter the members shall elect replacement Directors for a term of two (2) years.

**Section 2.** **Qualification.** Except for members of the First Board, each Director shall be a Unit Owner or the spouse of a Unit Owner (or, if a Unit Owner is a trustee of a trust, a Director may be a beneficiary of such trust; and if a Unit Owner or such a beneficiary is a corporation or partnership, a director may be an officer, partner or employee of such Unit Owner or beneficiary). If a Director shall cease to meet such qualifications during his term, he shall thereupon cease to be a Director and his place on the Board shall be deemed vacant.

**Section 3.** **Vacancies.** Any vacancy occurring in the Board shall be filled by majority vote of the remaining members thereof. Any Director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the Director whom he succeeds.

**Section 4.** **Nomination.** Nomination for election to the Board shall be made by a Nominating Committee which shall consist of two (2) members appointed by the Board to serve from the close of one (1) annual meeting to the close of the succeeding annual meeting. Such appointment shall be announced at the annual meeting. The Nominating committee may nominate any number of qualified individuals, but no less than the number of Directors to be elected. The nominations shall be made at least thirty (30) days prior to the annual meeting and a brief statement about the qualifications of each individual so nominated shall be included with the notice of the annual meeting. Nominations shall also be allowed from the members at the annual meeting.

**Section 5.** **Meetings.** A regular annual meeting of the Board shall be held within ten (10) days following the regular annual meeting of Unit Owners. Special meetings of the Board shall be held upon call by the President or by a majority of the Board on not less than forty-eight (48) hours notice in writing to each Director, delivered personally or by mail or telegram. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Board without a meeting. A Directors attendance at a meeting shall constitute his waiver of notice of said meeting.

**Section 6.** **Removal.** Any Director may be removed from office with or without cause by the vote of both Unit Owners.

**Section 7.** **Compensation.** Directors shall receive no compensation for their services as Directors, unless expressly provided for in resolutions duly adopted by Unit Owners.

**Section 8.** **Quorum.** A simple majority of Directors shall constitute a quorum.

**Section 9.** **Powers and Duties.** The Board shall have the following powers and duties:

(a) to elect and remove the officers of the Association;

(b) to administer the affairs of the Association and the Property;

(c) to engage the services of an agent (hereinafter sometimes called the "Managing Agent") to maintain, repair, replace, administer, and operate the Property or any part thereof for all Unit Owners, upon such terms and for such compensation and with such authority as the Board may approve;

(d) to formulate policies for the administration, management and operation of the Property and the Common Elements;

(e) to adopt rules and regulations, with written notice thereof to all Unit Owners, governing the administration, management, operation and use of the Property and the Common Elements, and to amend such rules and regulations from time to time and to establish reasonable financial assessments for infractions;

(f) to provide for the maintenance, repair and replacement of the Common Elements and payments therefore, and to approve payment vouchers or to delegate such approval to the officers or the manager or Managing Agent;

(g) 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 Property and the Common Elements, and to delegate any such powers to the managing Agent (and any such employees or other personnel who may be the employees of a Managing Agent);

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

(i) to determine the fiscal year from time to time as the Board deems advisable;

(j) to fix the estimated annual budget, and to provide the manner of assessing and collecting from Unit Owners their respective shares of such estimated expenses, as hereinafter provided;

(k) to borrow money for the purpose of repair or restoration of Common Elements without the approval of the members of the Association;

(l) to secure insurance policies as required by the Horizontal Property Declaration, and in this regard, annually to review the amounts of coverage afforded by such policies;

(m) unless otherwise provided herein or in the Horizontal Property 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;

(n) to be responsible for and maintain all streets, roads, utilities, and any other services of a public nature that are classified as Common Elements in the Horizontal Property Declaration;

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

**Section 10. Authority of Board to Act for Association.** Whenever in these By-Laws the Association is given the power to take any action, it is the intention of these By-Laws that the Board shall act for the Association.

**Section 11. Non-Delegation.** Nothing in these By-Laws shall be considered to grant to the Board, the Association, or to the officers of the Association, any powers or duties which, by law, have been delegated to Unit Owners.

## ARTICLE III

## Officers

**Section 1. Designation.** At each regular annual meeting of the Board, the Directors present at such meeting shall elect the following officers of the Association by a majority vote and any two offices may be combined into one office as the board may direct:

(a) As President, who shall also be a Director and who shall preside over meetings of the Board and of Unit Owners, and who shall be the chief executive officer of the Association;

(b) A Secretary, who shall keep the minutes of all meetings of the Board and of Unit Owners, and who shall, in general, perform all the duties incident to the office of Secretary (and who may be a representative of the Managing Agent);

(c) A Treasurer, who shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported;

(d) Such additional officers as the Board shall see fit to elect;

(e) Any officer may hold more than one office except that the office of the President and Secretary shall not be held by the same person.

**Section 2. Powers.** The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit.

**Section 3. Term of Office.** Each officer shall hold office for the term of one (1) year and until his successor shall have been appointed or elected and qualified.

**Section 4. Vacancies.** Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of said Board. Any Director so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by vote of the total membership of the Board at a special meeting thereof.

**Section 5. Compensation.** The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by both Unit Owners.

## ARTICLE IV

## Assessments

**Section 1. Annual Budget.** The Board shall establish an annual budget to provide for the needs of the Association. Such budget shall take into account the estimated common expenses and cash requirements for the year, including, but not limited to, salaries, wages, payroll taxes, legal and accounting fees, working capital

fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, and all other common expenses. To the extent that the assessments and other cash income collected from Unit Owners during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also take into account the estimated net available cash income for the year from the lease, operation or use of the Common Elements. The annual budget shall provide for a reserve for contingencies for the year and replacements, in reasonable amounts as determined by the Board.

**Section 2.** **Assessments**. The estimated annual budget for each fiscal year shall be approved by the Board, and copies thereof shall be furnished by the Board to each Unit Owner, not later than thirty (30) days prior to the beginning of such year. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Unit Owner shall pay, as his respective monthly assessment for the common expenses, one-twelfth (1/12) of his proportionate share of the common expenses for such year as shown by the annual budget. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new monthly assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay each month the amount of his respective monthly assessment as last determined. Each Unit Owner shall pay his monthly assessment on or before the first day of each month to the Managing Agent or otherwise as directed by the Board. No Unit Owner shall be relieved of his obligation to pay any assessment by abandoning or not using his Unit, the Private Elements, the Common Elements, or the Limited Common Elements.

**Section 3.** **Partial Year or Month**. Commencing with the date of occupancy of his Unit, each Unit Owner of newly developed units, shall pay his assessment for the following month or fraction of a month, which assessment shall be in proportion to his respective ownership interest in the Common Elements and the number of months and days remaining of the period covered by the current annual budget, and which assessment shall be computed by the Board.

**Section 4.** **Annual Report.** Within ninety (90) days following the end of each year, or as soon thereafter as practicable, the Board shall cause to be furnished to each Unit Owner a statement for such year, showing the receipts and expenditures and such other information as the Board may deem desirable.

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

**Section 6.** **Expenditures.** Except for the Management Agreement described in Article II, Section 9 (c) hereof and expenditures and contracts specifically authorized by the Horizontal Property Declaration and By-Laws, the Board shall not approve any expenditures in an amount in excess of ten (10%) percent of the annual budget for the then current year, unless required for emergency repair, protection or operation of the Common Elements or Limited Common Elements, nor enter into any contract for more than three (3) years, without the prior approval of both Units.

**Section 7.** **Lien.** It shall be the duty of every Unit Owner to pay his equal share of the common expenses as provided in the Horizontal Property Declaration, and as assessed in the manner herein provided. If any Unit Owner shall fail or refuse to make any such payment of assessments when due, such delinquent payment shall be subject to a late charge in an amount established by the Board, and such delinquent payment together with interest at the rate of fifteen (15%) percent per annum. Such delinquent payment, together with penalty and interest, shall constitute a lien, as provided in the Act, enforceable by the Board, on the interest of such Unit Owner in the Property. The Association, or its successors and assigns, acting through the Board or its agents, shall have the right to maintain a suit to foreclose any such lien, and there

shall be added to the amount due the costs of said suit and other fees and expenses, together with legal interest and reasonable attorney's fees to be fixed by the court. Furthermore, if any Unit Owner shall fail or refuse to pay when due his proportionate share of the common expenses, and such Unit Owner withholds payment thereof after demand by the Association in writing setting forth the amount claimed, the Association shall have the right to possession of such Unit. The Association, acting through its Board, shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Horizontal Property Act, the Horizontal Property Declaration, or these By-Laws, or as are otherwise available at law or in equity, for the collection of all unpaid assessments.

**Section 8.** **Records and Statement of Account.** The Board 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 may determine. The Board shall, upon receipt of fifteen (15) days written notice to the Association and upon payment of a reasonable fee, furnish to any Unit Owner a statement of his account setting forth the amount of any unpaid assessment(s) or other charges due and owing from said Unit Owner.

**Section 9.** **Discharge of Liens.** The Board may cause the Association to discharge any mechanic's lien or other encumbrances which in the opinion of the Board may constitute a lien against the Property or the Common Elements, rather than a lien against only a particular Unit. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorney's fees, incurred by reason of such lien.

**Section 10.** **Holding of Funds.** All funds collected hereunder shall be held and expanded for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in

proportionate amounts.

## ARTICLE V

## Use and Occupancy Restrictions

**Section 1.** General. No unlawful, noxious or offensive activities shall be carried on in any Unit or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board cause unreasonable noise or disturbance to others. Each Unit Owner shall maintain his Unit in good condition and in good order and repair, at his own expense, and shall not do or allow anything to be done in his Unit which may increase the cost or cause the cancellation of insurance on other Units or on the Common Elements. No Unit Owner shall display, hang, store or use any clothing, sheets, blankets, laundry or other articles outside of his Unit, or which may be visible from the outside of his Unit (other than draperies, curtains, or shades of a customary nature and appearance, subject to the Rules and Regulations of the Association), or paint or decorate or adorn the outside of his Unit, or install outside his Unit any canopy or awning, or outside radio or television antenna, or CB radio transmitters, or other equipment, fixtures or items of any kind, without written permission of the Managing Agent, acting in accordance with the Board's direction. No Unit Owner shall display, hang, store, or use any sign outside his Unit, in a hallway, or elsewhere, which may be visible from the outside of his Unit, without the prior written permission of the Managing Agent, acting in accordance with the Board's direction. No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board; provided, however that temporary structures may be erected for use in connection with the repair or rebuilding of the Buildings or any portion thereof.

**Section 2.** Trash. Trash, garbage and other waste shall be kept only in sanitary containers, and shall be disposed of in a clean and sanitary manner as prescribed from time to time by Rules and Regulations of the Association.

**Section 3.** **Use by Developer.** During the period of sale by Developer of any Units, Developer, and Developer's agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access, ingress to and egress from the Building and Property as may be required for the purposes of sale of Units. In addition, Developer reserves the right to enter into, upon, over and under any Unit for a period of one (1) year after the date of sale of the Unit for such purposes as may be reasonably necessary for Developer or their agents to service any Unit. While Developer may own any of the Units and until each Unit sold by it is occupied by Purchasers, Developer and their employees may use and show one (1) or more of such unsold or unoccupied Units as a model Unit or Units and may use one (1) or more of such unsold or unoccupied Units as a sales office, and may maintain customary signs in connection therewith. During the period of sale by Developer, the Developer shall be allowed a seat on the Board of Directors and voting privileges as provided in Article II herein.

**Section 4.** **Storage.** Articles of personal property belonging to any Unit Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing, and other articles, shall not be stored or kept in the Common Elements, but shall be confined to the units or storage areas within the units and/or its Private Elements. Storage of boats, trailers, campers, and motor homes on the Property shall be subject to the Rules and Regulations of the Association applicable thereto.

**Section 5.** **Wiring.** No Unit Owner shall overload the electrical wiring in the Building, or operate any machines, appliances, accessories, or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others, or connect any machines, appliances, accessories, or equipment to the heating or plumbing system without the prior written consent of the Board or the prior written consent of the Managing Agent, given in accordance with the Board's direction.

**Section 6.** **Rules and Regulations.** Unit Owners shall be subject to such further restrictions as may be contained in Rules and Regulations of the Association concerning the use of Units and the Common Elements which may be enacted from time to time by the Board. All such rules and Regulations shall be binding Rules and

Regulations of the Association unless rejected by all of the votes of Unit Owners, and copies of such Rules and Regulations and any amendments or additions thereto shall be furnished to all Unit Owners upon request.

## ARTICLE VI

## Contractual Powers

No contact or other transaction between this Association and one (1) or more of its Directors, or between the Association and any corporation, firm or association in which one (1) or more of the Directors of the Association are Directors, or are financially interested, is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

(a) the fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Director or Directors; or

(b) the contract or transaction is just and reasonable as to the Association at the time it is authorized or approved. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction.

## ARTICLE VII

## Amendments

**Section 1.** **Amendments.** These By-Laws may be amended, at a regular or special meeting of the members, by a vote of both members present in person or by proxy subject to Section 2 below. Any proposed amendment in these By-Laws shall require written notice of the proposed amendment to be delivered to members of the Association in writing at least fifteen (15) days prior to any meeting at which the subject

amendment will be considered.

**Section 2. Mortgagee Approvals.** Any and all amendments eligible for approval in Section 1 of this Article shall be subject to the following conditions and restrictions: Amendments of a material nature must be agreed to by members who represent both votes in the Homeowners' Association. In addition thereto, approval must be obtained from eligible mortgage holders who represent all of the Units that are subject to mortgages held by eligible holders (eligible mortgage holders shall be defined as those holders of a first mortgage on a Unit who have requested the Homeowner's Association to notify them on any proposed action that requires the consent of a specified percentage of eligible mortgage holders). A change to any of the following shall be considered under this Section, as material:

1. Voting Rights.
2. Assessments, assessment liens, or the priority of assessment liens.
3. Reserves for maintenance, repair and replacement of common areas.
4. Responsibility for maintenance and repairs.
5. Reallocation of interests in the common areas or right to their use.
6. Redefinition of unit boundaries.
7. Conversion of units into common areas or vice versa.
8. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project.
9. Insurance or fidelity bond changes.
10. Leasing of units.
11. Imposition of any restriction on a unit owners right to sell or transfer his or her property.
12. A decision by the Homeowner's Association to establish self-management when professional management has been required previously by the projects documents or by an eligible mortgage holder.

13. Restoration and repair of the project (after a hazard damage or partial condemnation), in a manner other than specified in the project documents.

14. Any action to terminate the legal status of the project after substantial destruction or condemnation occurs.

15. Any provisions that expressly benefit mortgage holders, insurers or guarantors.

**Section 3.** **Condemnation**. Should the unit owners consider termination of the legal status of Dakota Village Homeowners' Association, Inc., for any reason other than the substantial destruction or condemnation of the Association property, eligible mortgage holders, as heretofore defined, that represent all of the mortgaged units must agree to said termination of said legal status. Each eligible mortgage holder shall be given written notification of said intent to terminate the legal status of the Association and shall have thirty (30) days after it receives proper notice of the proposal shall be deemed to assent to said amendment, providing that said notice was delivered by certified or registered mail, with a return receipt requested. These By-Laws may be amended or modified from time to time by action or approval of all of the Unit Owners. Such amendments shall be recorded in the Office of the Register's Office of Davidson County, Tennessee.

## ARTICLE VIII

## Indemnification

**Section 1.** **General**. To the extent permitted by law, the Association shall indemnify and hold harmless each of its Directors and officers, each member of any committee appointed pursuant to these By-Laws, against all contractual and other liabilities to others arising out of contracts made by, or other acts of such Directors, officers, or committee members on behalf of Unit Owners, or arising out of their status as Directors, officers, or committee members, 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 or otherwise, in which any such Director, officer or committee member may be involved by virtue of such person's being or having been such Director, officer, or committee member, provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have 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, or committee member, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person's being adjudged liable for gross negligence or fraud in the performance of his duties as such Director, officer or committee member.

**Section 2.** **Success on Merits.** To the extent that a member of the Board, or an officer of the Association, or a member of any committee appointed pursuant to these By-Laws has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonable incurred by him in connection therewith.

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

**Section 4.** **Miscellaneous.** The Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Article; provided, however, that the liability of any Unit Owner arising out of any contract made by or other acts of the Directors, officers, or members of such committees, shall be limited to such proportion

of the total liability hereunder as said Unit Owner's percentage of interest in the common Elements bears to the total percentage interest of all Unit Owners in the Common Elements. Every agreement made by the Directors, officers, or members of such committees, or by the managing Agent on behalf of Unit Owners shall provide that the Directors, officers, members of such committees, or the Managing Agent, as the case may be, are acting only as agents for Unit Owners 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 percentage interest of all Unit Owners in the Common Elements. The indemnification provided by this Article VIII 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 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 a member of the Board, officer of the Association, or a member of such committee, and shall inure to the benefit of their heirs, executors, administrators, successors, and assigns of such person or entity.

## ARTICLE IX

## Mortgages

**Section 1.** **Notice to Board.** A Unit Owner who mortgages his Unit shall notify the Board of the name and address of his mortgage and shall file a conformed copy of the note and deed of trust or mortgage with the Board; and the Board shall maintain such information in a book entitled "Mortgages of Units".

**Section 2.** **Notice of Unpaid Common Charges.** The Board, whenever so requested in writing by a mortgage of a Unit, shall promptly report any then unpaid common charges due from, or any other default by, the owner of the mortgaged Unit.

**Section 3.** **Notice of Default.** The Board, when giving notice to a Unit Owner of a default in paying common charges or other default, shall send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has therefore been furnished to the Board.

**Section 4.** **Examination of Books.** Each Unit Owner and each mortgage of a Unit shall be permitted to examine the books of account of the Association at reasonable times, on business days; but not more often than once a month.

**Section 5.** **Interest of Valid First Mortgagee.** The interest of valid first mortgage shall be superior to the interest of the Board in the event of a default, and nothing in this instrument shall be construed to the contrary. If the first mortgage has incorporated the terms of these By-Laws, the Horizontal Property Declaration and the contract in its deed of trust, then said first mortgage may at its option declare a default in its deed of trust by reason of any default hereunder, and may proceed to enforce its rights according to the terms of the deed of trust notwithstanding any enforcement instituted by the Board.

## ARTICLE X

## Definition of Terms

The terms used in these By-Laws, to the extent they are defined therein, shall have the same meaning as set forth in the Horizontal Property Declaration for Dakota Village, of record in the Office of the Register of Deeds for Davidson County, Tennessee.

The term "Member" as used in these By-Laws, means "Unit Owner" as defined in the Horizontal Property Declaration.

## ARTICLE XI

## Conflicts

These By-Laws are set forth to comply with the requirements of The Horizontal Property Act of Tennessee codified at TCA §66-27-101 et seq (the "Act"), as it may be amended from time to time, and to allow the By-Laws to control in specific situations

where such law allows. In the event any of the By-Laws conflict with the provisions of said statute or of the Horizontal Property Declaration, the provisions of said statute or of the Horizontal Property Declaration, as the case may be, shall control.