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Franklin, Tennessee 37064

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

# FOR

# 5009 DAKOTA AVENUE TOWNHOMES

## A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS (THIS IS A PLANNED UNIT DEVELOPMENT ESTABLISHED PURSUANT TO TENNESSEE CODE ANNOTATED § 66-27-103)

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR 5009 DAKOTA AVENUE TOWNHOMES,** (hereinafter referred to as the "Declaration"), has been made and entered into by **ASPEN CONSTRUCTION, INC.**, a Tennessee corporation, (hereinafter referred to as the "Developer"), as of the date set forth above the signature below.

**W I T N E S S E T H:**

**WHEREAS**, the Developer is the owner of certain real property located in the County of Davidson, State of Tennessee, and described on **Exhibit A** attached hereto and incorporated herein by reference (hereinafter referred to as the "Parcel");

**WHEREAS**, the Developer intends to and does hereby submit the above described Parcel of real estate, together with all improvements and structures thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, and all rights and privileges belonging or in any way pertaining thereto and benefitting the same (hereinafter collectively referred to as the "Property") to the provisions of the Tennessee Horizontal Property Act, Tenn. Code Ann. § 66-27-101, et seq., for the express purpose of establishing thereon a horizontal property regime with private elements to be known as 5009 DAKOTA AVENUE TOWNHOMES;

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

**NOW, THEREFORE**, the Developer declares as follows:

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

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

(b) "Association" means 5009 Dakota Avenue Townhomes Association, Inc., a Tennessee not-for-profit corporation organized pursuant to Tenn. Code Ann., Sections 48-51-101, et seq.

(c) "Board" means the Board of Directors of the Association.

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

(e) "Bylaws" means the Bylaws of the Association, attached hereto as **Exhibit B** and incorporated herein by reference, as amended from time to time. For purposes of the Act, all provisions contained in this Declaration dealing with the administration and maintenance of the Property shall be deemed to be a part of the Bylaws.

(f) "Common Elements" means all real and personal property within the Property other than the Units (which include the Private Elements within the Units), which are now or hereafter owned by the Association. The Common Elements are all areas included in the Parcel, which are not a part of the Private Elements shown on the Plat, and shall be held by the Association for the common use and enjoyment of the Unit

Owners. The Common Elements shall include, but shall not be limited to, lawns, gardens, roadways, parking areas, drainage structures and facilities, fences, sidewalks, signs, lights and utilities. Common Elements shall be transferred to and owned by the Association. "Common Elements" as used herein shall also mean "General Common Elements" as set forth in the Act, however, excluding all Private Elements and Limited Commons Elements. Developer shall convey title to the Common Elements to the Association.

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

(h) "Developer" means ASPEN CONSTRUCTION, INC., a Tennessee corporation, its successors and assigns, provided such successors or assigns are designated in writing by Developer as a successor or assign of the rights of Developer set forth herein.

(i) "Limited Common Elements" means any Common Elements contiguous to and serving a single Unit or a certain number of Units to the exclusion of other Units, (including without limitation patios, stoops and porches), as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful Occupants of such Unit or Units either in this Declaration, on the Plat, or by later decision of all of the Unit Owners. The area of the Limited Common Elements for each Unit is as shown on the Plat.

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

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

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

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

(n) "Plat" means the map or drawing of the Parcel submitted pursuant to the provisions of the Act showing the number of each Unit, expressing its area, location and other data necessary for identification, including but not limited to, the area of the Private Elements upon which the Unit is located, said Plat being attached hereto as **Exhibit C** and incorporated herein by reference, and to be placed of record as a part of this

instrument with the Registers Office for Davidson County, Tennessee. Upon any annexation of any additional phases into the provisions hereof, Plat shall also mean the plat for the additional phase or phases so annexed.

(o) "Private Elements" means the area upon which each Unit is located and the improvements now or hereafter located thereon. Exclusive ownership in fee simple and use of the Private Elements for each Unit is reserved to such Unit. The area of the Private Elements for each Unit is as shown on the Plat.

(p) "Property" means all the land and space comprising the Parcel, and all improvements and structures thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, and all rights and privileges belonging or in any way pertaining thereto and benefitting the same, submitted to the provisions of the Act. Upon any annexation of additional phases into the provisions hereof, Property shall also mean and include the additional area so annexed.

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

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

(s) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit, and shall be deemed the same as a "co-owner" under the Act. Unless specifically provided otherwise herein, the Developer shall be deemed a Unit Owner so long as the Developer is the title holder of any Unit.

2. **Submission of Property to the Act.** The Developer, by recording this Declaration, does hereby submit and subject the Parcel and the Property to the provisions of the Act and hereby establishes a horizontal property regime with private elements as authorized and described in the Act and to be hereafter known as 5009 Dakota Avenue Townhomes.

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

4. **Units.** The legal description of each Unit shall consist of the identifying letter or number of such Unit as shown on the Plat. Every deed, lease, mortgage, deed of trust or other instrument shall legally describe a Unit by its identifying letter 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 provided by the Act, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause such Owner's Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat.

5. **(a) Association of Unit Owners and Administration and Operation of the Property.** There has been or will be formed an Association having the name 5009 Dakota Avenue Townhomes Association, Inc., a Tennessee not-for-profit corporation, which Association shall be the governing body for all of the Unit Owners and shall be operated to provide for the maintenance, repair, replacement, administration, operation and care of the Property as provided in the Act, this Declaration and Bylaws. The Unit Owners shall each be members of the Association, with each Unit holding an undivided membership Interest in the Association which shall be appurtenant to such Unit, each such membership interest appurtenant to a Unit being in an equal share, subject to the provisions concerning voting hereinafter set forth. The Bylaws for the Association shall be the Bylaws attached to this Declaration as **Exhibit B** and made a part hereof. The Board of Directors of the Association shall be elected and shall serve in accordance with the provisions of the Bylaws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the use and benefit of Unit Owners in accordance with the provisions of the Declaration and Bylaws. Each Unit Owner shall be a member of the Association so long as such Owner is a Unit Owner. A Unit Owner's membership shall automatically terminate when such Owner ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall automatically succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be divided among the respective Unit Owners with one (1) vote granted to each Unit.

(b) **Voting Membership.** The Members shall be all Unit Owners and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

(c) **Management of Property.** The Board shall have the authority, but not the requirement, to engage the services of an agent (herein sometimes referred to as the "Managing Agent") to maintain, repair, replace, administer and operate the Property, or any part thereof, to the extent deemed advisable by the Board, subject to the provisions of subparagraph (d) below. The Board shall require that any such Managing Agent have fidelity bond coverage on its employees handling Association funds. The cost of such services shall be a common expense, as defined in paragraph 10 below. Any vote of the Board to adopt any form of management of the Property without the services of a professional property management company shall be subject to the prior approval of a majority of all first mortgagees of Units.

(d) **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 maintain customary signs in connection therewith.

(e) **Non-Liability of the Directors, Board and Officers.** Neither the directors, Board, nor officers of the Association, 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 or officers, 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 or officers, and their respective heirs, executors, administrators, successors and assigns in accordance with the Charter of the Association and Bylaws.

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

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

7. **Ownership of Interests in the Association.** Subject to the provisions concerning voting rights hereinabove contained, each Unit shall be allocated an equal percentage ownership in the Association. The percentages of ownership interests shall remain constant unless hereafter changed by recorded amendment to this Declaration consented to in writing by the Unit Owners, in accordance with the requirements hereinafter contained. Said ownership Interest shall be an undivided Interest, and the undivided membership interests in the Association shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of

ownership. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in the Association corresponding to said Unit. The undivided percentage of ownership in the Association corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit.

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

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

10. **(a) Common Expenses.** Each Unit Owner shall pay an equal share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance with the Declaration and Bylaws (which expenses are herein sometimes referred to as "common expenses"), including, but not limited to, the maintenance and repair thereof and any and all replacements and additions thereto. Payment of common expenses, including any prepayment thereof required by any contract for a sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. No Unit Owner shall be exempt from payment of such Unit Owner's proportionate share of the common expenses by waiver or nonuse 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 maximum rate then allowed by applicable law, 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.

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

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

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

(e) **Non-liability of Developer for Assessments.** Notwithstanding anything stated elsewhere in this paragraph 10 or this Declaration to the contrary, the Units owned by the Developer shall not be subject to nor accrue liability for any assessment for common expenses or special assessments of any nature while owned by the Developer.

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

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

13. **Insurance.** The Board shall have the authority to and shall obtain insurance for the Units and the Common Elements 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 Units and the Common Elements, and against such other hazards and for such amounts as the Board may deem advisable. Such insurance may include all or any portion of all Limited Common Elements. Insurable replacement cost shall be deemed to be the cost of restoring the Units and the Common Elements, or any part thereof to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insurer. The premiums for such insurance shall be a common expense.

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

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

fact that said person is or was director or officer of the Association, or a member of such a committee.

Each Unit owner shall be responsible for obtaining his or her 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.

14. **Maintenance, Repairs and Replacements.**

(a) **Obligations of Unit Owners.** Each Unit Owner, at such Owner's expense, shall be responsible for all maintenance of, repairs to and replacements to and within the exterior and interior of such Owner's Unit, Private Elements and Limited Common Elements. In this regard, and without limitation, 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 without limitation plumbing, pipes, wiring, appliances and structural components of the Unit. In addition each Unit Owner shall be responsible for all exterior glass, windows, including storm windows, screens and doors, including storm doors, and all portions of the Unit for which the Association is not responsible. All structural repairs to the Unit are the financial responsibility of the Unit Owners. Notwithstanding any other p[revisions contained in this paragraph 14 or this Declaration elsewhere to the contrary, the Unit Owner shall be responsible for the repair and maintenance of the air conditioning condenser serving his or her Unit.

(b) **Obligations of the Association.** The Association shall be responsible for maintenance of, repairs to and replacements within the Common Elements, excluding Private Elements and Limited Common Elements. The cost of maintenance, repairs and replacements, which are the responsibility of the Association, shall be part of the Common Expenses, subject to the terms of this Declaration, the Bylaws, rules and regulations of the Association.

(c) **Loss Attributable to Unit Owner.** Notwithstanding 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 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 or the Board, to the extent not covered by the Association's insurance or sufficient proceeds are not collected from the insurance carrier.

The authorized representative of the Association, Board or of the Managing Agent with approval of the Board shall be entitled to reasonable access to the individual Units and Private

Elements as may be required in connection with the preservation of any individual Unit or Private Elements in the event of an emergency, or in connection with maintenance of, repairs or replacements within the Common Elements, Private Elements or any equipment, facilities or fixtures affecting or serving the other Units, Common Elements or Private Elements or to make any alteration required by any governmental authority.

15. **Architectural Control, Alterations, Additions or Improvements.**

(a) **Architectural Control.** No structure of nay type, nature or kind may be erected, placed or altered on any Private Elements or Limited Common Elements, nor shall the exterior of any Unit be altered or modified in any manner, and no building permit may be obtained, until the construction plans and building specifications and a plan showing (i) the location of improvements on the Private Elements; (ii) the grade elevation (including rear, front and side elevations); (iii) the type of exterior material and roof material (including delivery of samples thereof); (iv) the color of paint or stain to be applied to any exterior surfaces and the color of the roof material (including delivery of samples thereof); and (v) the location and size of the driveway shall have been approved in writing by both Unit Owners.

(b) **Alterations, Additions or Improvements.** Except as provided specifically herein, no alteration of any Common Elements or Private Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the other Unit Owner. The Board may authorize and charge as common expenses alterations, additions and improvements of the Common Elements and Private Elements as provided in the Bylaws. Any Unit Owner may make alterations, additions or improvements wholly within the interior of the Unit of the Unit Owner without the prior written approval of the other Unit Owner, but such Unit Owner shall be responsible for any damage to other the Unit(s), the Common Elements, the Private Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements.

(c) **No Changes on Exterior Without Approval.** Except as may be specifically provided elsewhere in this Declaration, or as maybe specifically provided in the Bylaws, no alteration of or to roofing shingles, any exterior materials, driveway, gardens, landscaping, or to the exterior of any Unit, to any Private Element or to any Limited Common Area, may be made without the prior written approval of the other Unit Owner.

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

17. **Encroachments and Easements.** If any portions of the Common Elements shall actually encroach upon any Unit or Private Elements, or if any Unit or Private Elements shall

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

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

18. **Association's and Board's Right to Purchase at a Foreclosure Sale.** The Board shall have the power and authority to bid and purchase, for and on behalf of any Unit, or interest therein, at a sale pursuant to a deed of trust or mortgage foreclosure, a foreclosure of the lien for common expenses under the Act, or an order or direction of a court, or at any other involuntary sale, upon the consent or approval of both Unit Owners. Such consent shall set forth a maximum price which the Board or its duly authorized agent may bid and pay for said Unit.

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

19. **Use and Occupancy Restrictions.** Subject to the provisions of the Bylaws, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed and as allowed by municipal zoning laws. Each Unit shall be used as a residence or such other use expressly permitted by this Declaration, and for no other purposes except that professionals may use their residence (not in violation of applicable zoning laws) as a home office, provided that no customers or visitors come to the Unit and no merchandise, inventory or equipment is kept, stored, shipped or otherwise dealt with on the Property. The foregoing restrictions as to residential uses shall not, however, be construed in such manner as to prohibit a Unit Owner from: (a) maintaining a personal professional library; (b) keeping personal business or professional records or accounts; or (c) handling personal or professional telephone calls or correspondence. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions, provided they do not violate the above restrictions.

No Unit or Common Elements may be used in violation of the restrictions and provisions contained herein or in the Bylaws.

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

The Limited Common Elements, including, but not limited to, landscaping, gardens, lawn area and driveway, shall be maintained by the respective Unit Owner in the same condition, repair, configuration and layout as at the date of execution hereof.

20. **Remedies.** In the event of any violation of the provisions of the Act, Declaration, Bylaws or rules and regulations of the Board or Association by any Unit Owner (either by the Unit Owner's own conduct or by the conduct of any other Occupant of such Owners Unit), the Association, or its successors or assigns, or the Board, or its agent, or the other Unit Owner, shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, Bylaws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to sell the Unit through judicial process as provided hereinbefore, or for any combination of remedies, or for any other relief. All expenses of the Board or other Unit Owner 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 maximum rate of interest then allowed by applicable law, 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 or other Unit Owner 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 mortgage or deed of trust on the interest of such Unit Owner, except for the amount of the proportionate share of said common expenses which become due and payable from and after the date on which the said mortgage or deed of trust

owner or holder either takes possession of the Unit, accepts a conveyance of any interest therein (other than as a security) or files suit to foreclose its mortgage or deed of trust in the event of any such default by any Unit Owner, the Board and the manager or Managing Agent, if so authorized by the Board, or the other Unit Owner, 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 or other Unit Owner. This paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of record of mortgages and deeds of trust against Units.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board or other Unit Owner the right, in addition to any other rights provided for in this Declaration; (a) to enter (either peaceably or forcibly without liability to such Unit Owner for such entry) upon the Unit, or any portion of the Property upon which, or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, or the other Unit Owner, 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 Declaration or the regulations adopted by the Board, and if such default or violation shall continue for ten (10) days after notice to the Unit Owner in writing from the Board, or other Unit Owner, or shall occur repeatedly during any ten (10) day period after such written notice or request to cure such violation from the Board or other Unit Owner, then the Board or other Unit Owner, 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, or other Unit Owner, 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 or mortgage) 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 Association, 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 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 or other assessments permitted by this Declaration, which default continues for a period of ninety (90) days, the Board shall have the power and authority to place such Unit Owner's name on a list of delinquent Unit Owners, which list may be posted at a place designated by the Board for notices.

21. **Amendments.** Except as specifically stated elsewhere herein, and except for this Section 21, any provisions of this Declaration may be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission, signed by Unit Owners owning not less than all of the total Units and acknowledged, provided, however, that all lien holders of record have been notified by certified mail of such change, modification or rescission, and an affidavit by the secretary of the Association certifying to such mailing is made a part of such instrument.

The change, modification or rescission, whether accomplished under the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the office of the Register of Deeds of Davidson County, Tennessee; provided, however, that no provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act.

22. **Notices.** Notices provided for in the Act, Declaration or Bylaws shall be in writing, and shall be addressed if to a Unit Owner, to the address of such Owner's Unit, and if to the Association or Board, as the case may be to the registered office, as set forth in Charter of the Association or to such other address as may be designated by the Association or Board from time to time, or at such other address as may be hereinafter provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices by giving written notice to the Association. Notices addressed as above shall

be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

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

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

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

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

All present and future Unit Owners, tenants and Occupants of a Unit shall be subject to, and shall comply with, the provisions of the Bylaws appended hereto and recorded herewith as they may be amended from time to time. The acceptance of a deed of conveyance, devise or of a lease to a Unit, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the said Bylaws and any rules and regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Unit Owner, tenant or

Occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

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

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

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

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

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

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

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

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

29. **Provisions Relative to Mortgagee's Rights and to Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Regulations.** Notwithstanding anything to the contrary contained in this Declaration, or in the Bylaws which are attached hereto, all terms, conditions and regulations which are now existing, or which may be amended from time to time, by the Federal Home Loan Mortgage Corporation ("FHLMC") or Fannie Mae ("Fannie Mae") pertaining to projects of this nature 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 Fannie Mae regulations pertaining to planned unit developments, are hereby deleted and the following rights of mortgagees are itemized as follows:

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

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

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

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

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

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

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

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

(e) An adequate reserve fund for maintenance, repair and replacement of Common Elements, which must be replenished and re-established on a periodic basis, will be established and funded by regular monthly payments rather than by special assessments. A working capital fund for the initial months of operation equal to at least two (2) months'

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

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

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

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

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

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

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

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

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

30. **Party Walls.** Any wall built as a part of the original construction of a structure upon the Private Elements and placed on the dividing line between two Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be equally shared by the Unit Owners who make use of the wall, provided that the party causing any damage shall be responsible for the full cost thereof in accordance with applicable law.

31. **Legal Opinion.** The legal opinion required in Tennessee Code Annotated Section 66-27-103(b) to create a planned unit development under said statute is attached hereto as **Exhibit D.**

**IN WITNESS WHEREOF,** the undersigned have executed this Declaration this the 27 day of Jan, 2014.

**ASPEN CONSTRUCTION, INC.**

By: John Zelenak

Its: Pres.

**STATE OF TENNESSEE**

**COUNTY OF WILLIAMSON**

Personally appeared before me, the undersigned, a notary public in and for said county and state, John Zelenak, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he/she executed the within instrument for the purposes therein contained, and who further acknowledged that he is President of Aspen Construction, Inc., a Tennessee corporation, the maker or a constituent of the maker, and is authorized by the maker or by its constituent, the constituent being authorized by the maker to execute this instrument on behalf of the maker.

Witness my hand, at office, this the 27th day of January, 2014.

LaShonda H. Maxey
Notary Public

My Commission Expires: 12-6-2016



## EXHIBIT A

Land in Davidson County, Tennessee, being a part of two blocks of ground shown on the Plan of the Charlotte Park Company's first Addition to Nashville, as of record in Book 57, page 103, Register's Office for said County, and also shown as a part of Lot No. 18 on the Realty Savings Bank & Trust Company's Revised Plan of Charlotte Park Company's First Addition, as of record in Book 421, page 18, Register's Office for Davidson County, Tennessee.

Beginning in the southerly margin of Dakota Avenue, at a point 70 feet East of the southeast corner of said Avenue and 51st Avenue North; Thence southerly 150 feet to the northerly margin of an alley; Thence along said margin easterly 50 feet; Thence northerly with an old tree row 150 feet to the southerly margin of Dakota Avenue; Thence westerly along said margin, 50 feet to the beginning

Being the same property conveyed to Aspen Construction, Inc., a Tennessee Corporation, by Warranty Deed from Jeff C. Estepp and Trina Estepp, husband and wife, of record in Instrument No. 20140106-0001116, Register's Office for Davidson County, Tennessee.

**EXHIBIT B**

# BYLAWS OF
# 5009 DAKOTA AVENUE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.

The following Bylaws shall apply to the above-named Townhomes (which shall in an all-inclusive manner respecting the common elements, limited common elements, private elements and individually owned interest in the Townhomes be referred to herein collectively as the "Townhomes" and an individual Townhome may be referred to herein as a "Unit" or "unit") located in Nashville, Davidson County, Tennessee, more particularly described in and created by a Declaration of Covenants, Conditions and Restrictions for 5009 Dakota Avenue Townhomes (the "Declaration"), to be recorded in the Davidson County, Tennessee Register's Office and in all present and future owners, tenants and occupants of any units of the Townhomes and all other persons who shall at any time use the Townhomes. These are the Bylaws of 5009 Dakota Avenue Townhomes Homeowners Association, Inc., a Tennessee not-for-profit corporation (the "Association").

## ARTICLE I: Membership

Section 1. Qualification. All owners of units of the Townhomes shall be members of the Association. The owner of any unit upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such unit ceases for any reason, at which time his membership in the Association shall automatically cease. Owners shall be entitled to one (1) vote for each unit.

Section 2. Place of Meetings. Meetings of the Association shall be held in the one (1) of the Townhomes or such other suitable place convenient to the unit owners as may be designated by the Board or the Association.

Section 3. Annual Meetings. Annual meetings of the Association shall be held on the last Monday of September of each year at a time set by the Association. However, the first organizational meeting of the Association shall occur within ten days following surrender by Aspen Construction, LLC (the "Developer") of control of the Association, as provided in the Declaration.

Section 4. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President or a petition signed by all of the unit owners and presented to the Secretary following surrender of the Developer's control.

Section 5. Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to every unit owner according to the Association's record of ownership at least five days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and the purpose therefor, in any of the following ways: (a) by delivering it to the unit owner personally, or (b) by leaving it at the unit owner's unit in the Townhomes or at the unit owner's usual residence of place of business, or (c) by mailing it, postage prepaid, addressed to the unit owner at the address for that

unit owner as it appears on the Association's record of ownership. If notice is give pursuant to the provisions of this section, the failure of any unit owner to receive actual notice of any meeting shall in no way invalidate such meeting or any actions taken. The presence of any unit owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

Section 6. Quorum. The presence at any meeting in person or by proxy of all of the unit owners shall constitute a quorum, and the acts of all of the unit owners present, in person or by proxy, at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein.

Section 7. Voting. Each unit shall be entitled to one vote. Votes may be cast in person or by proxy by the respective unit owners as shown in the record of ownership of the Association. If a unit is owned by two or more persons, any record owner present at a meeting may cast the vote for that unit. If more than one record owner is present at a meeting, only one owner may cast the vote of the unit, as the unit owners agree among themselves. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the vote of any unit owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he or she owns or controls such unit in such capacity.

Section 8. Proxies and Pledges. The authority given by any unit owner to another person to represent him at meetings of the Association shall be in writing, signed by such owner and filed with the Secretary, and unless limited by its terms shall continue until revoked by writing filed with the Secretary or by the death or incapacity of such owner. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale or lease of any unit or interest therein, a true copy of which is filed with the Association shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Association in like manner.

Section 9. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the unit owners present, whether or not a quorum is present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 10. First Meeting. Notwithstanding the above, the first meeting of the Association shall be called and convened by the Developer at such time and at such place as the Developer shall elect for the purposes of organizing the Association, appointing the first Board of Directors of the Association, as hereinafter provided, and to conduct such additional business as the Developer shall deem necessary, it its sole and absolute discretion.

## 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 three (3) 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 Developer, as defined in the Declaration, shall relinquish control of the Townhomes in the manner expressly set forth in the Declaration, the Directors (hereinafter called "members of the First Board") shall be appointed by the Developer, and shall serve at the pleasure of the Developer until replaced by the Developer at such time and in such manner as the Developer shall elect, in its sole and absolute discretion. After the First Board, each Unit owner shall automatically be deemed elected to serve as a Director with no formal casting of votes either in person or by proxy at the meeting required. Every Director, except for members of the First Board, shall hold office for the term of three (3) years and until his successor shall be elected and qualified.

Section 2. Qualification. Except for members of the First Board, two (2) Directors shall be Unit owners (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 beneficiary is a corporation or partnership, a Director may be an officer, partner or employee of such Unit owner or beneficiary). A third Director shall be elected by the two (2) Directors to act as Chairman, whose only vote shall be allowed to be used to break ties in voting, and in the event the two (2) Directors shall be unable to agree upon who shall serve as the third Director, the third director shall be appointed by the Developer or the designee of the Developer. In the event the Developer ceases to exist or is otherwise unable or refuses to appoint the third director or such a designee, upon Petition filed by one (1) of the Unit owners in the Chancery Court for Davidson County, the third Director shall be appointed by the Chancery Court for Davidson County, Tennessee.

Section 3. Vacancies. Any vacancy occurring in the Board shall be filled by majority vote of the remaining members thereof, or by the order of the Chancery Court as hereinabove provided, and in keeping with the provisions hereinabove set forth. 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. 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 Director's attendance at a meeting shall constitute his waiver of notice of said meeting.

Section 5. Removal. Except for a Director(s) appointed by the Declarant, any Director may be removed from office with cause by the vote of all Unit owners.

Section 6. Compensation. Directors shall receive no compensation for their services as Directors, unless expressly provided for in resolutions duly adopted by Unit owners.

Section 7. Quorum. A majority of Directors shall constitute a quorum.

Section 8. 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 each, every and all the affairs of the Association and the Townhomes;

(c) to engage the services of an agent (hereinafter sometimes called the "Managing Agent") to maintain, repair, replace, administer, and operate the Townhomes 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 Townhomes;

(e) to adopt rules and regulations, with prior written notice thereof to all Unit owners, governing the administration, management, operation and use of the Townhomes, and to amend such rules and regulations from time to time;

(f) to provide for the maintenance, repair and replacement of those portions of the Townhomes required or permitted by the Declaration 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 Townhomes, 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 of the Association and to change said 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 enter into any lease agreement for lease of such premises suitable for use as guest or custodian apartments, upon such terms as the Board may approve;

(l) to borrow money for the purpose of repair or restoration of Townhomes or any part thereof without the approval of the Unit owners or members of the Association;

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

(n) 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;

(o) to be responsible for and maintain all improvements and parts of the Townhomes that are classified as Common Elements and as otherwise required by the Declaration;

(p) 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 or in the Declaration or these By-Laws.

Section 10. Power to Take Any Action. 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 in all cases, except and to the extent that it is expressly provided that action be taken upon vote of the Unit owners.

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.

Section 12. Rights of Developer. Notwithstanding anything stated to the contrary in this Article II, the Developer shall enjoy the voting rights established for it, and the Developer's rights and privileges established by the Declaration and these By-Laws shall not be voided or modified by the provisions of this Article II or these By-Laws.

## ARTICLE III: Officers

Section 1. Designation. The principal officers of the Association shall be a President and a Secretary/Treasurer. The Association may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

Section 2. Election, Term and Compensation. The officers of the Association shall be elected annually by the Association at its annual meeting, who shall serve until their successors have been duly elected and qualified.

Section 3. Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Association and that officer's successor elected at any regular meeting of the Association, or any special meeting.

Section 4. President and Vice President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association. Subject to the control of the Association, the President shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. The President shall also have such other powers and duties as may be provided by these Bylaws or assigned from time to time by the Association. The Vice President, if any, shall so serve in the absence of the President.

Section 5. Secretary/Treasurer. The Secretary/Treasurer shall (i) attend and keep the minutes of all meetings of the Association, give all notices thereof as provided by these Bylaws, maintain and keep a continuous and accurate record of ownership of all units, and have charge of such books, documents and records of the Association as the Association may direct and (ii) maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody, in the name of the Association, of all its funds and securities.

Section 6. Auditor. The Association shall appoint annually an accountant or accounting firm as auditor, who may not be an officer of the Association nor own any interest in any unit, to audit the books and financial records of the Association.

## ARTICLI: IV: Administration

Section 1. Management. The Association shall at all times manage and operate the Townhomes and have such powers and duties as may be necessary or proper therefore, including without limitation the following:

(a) Supervision of the immediate management and operation of the Townhomes;

(b) Inspection, maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto;

(c) Purchase, maintenance and replacement of any equipment and provision for all water and utility services required for the common elements;

(d) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the Townhomes;

(e) Preparation at least 60 days before each fiscal year of a proposed budget and schedule of assessments for such year;

(f) Collection of all installments of assessments levied and payment of all common expenses authorized by the Association;

(g) Purchase and maintenance in effect of all policies of hazard and liability insurance for the Townhomes required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration or the Association;

(h) Notification of all persons having any interest in any unit, according to the Association's record of ownership, of any delinquency exceeding 60 days in the payment of any assessment against such unit;

(i) Assignment and supervision of motor vehicle parking including the authority to make reasonable rules, fines and charges in regard thereto;

(j) Supervision of the use of the common elements, which includes adoption and enforcement of Townhome Rules and enforcement of the provisions of the Declaration and these Bylaws.

Section 2. Managing Agent. The Association may employ from time to time a responsible Managing Agent or Administrator to manage and control the Townhomes, subject at all times to direction by the Association, with all administrative functions set forth specifically in preceding Section 1, and such other powers and duties, and at such compensation as the Association may establish. The employment contract for a Managing Agent or Administrator shall not exceed three years in duration and shall be terminable by the Association without cause and without payment of a termination fee upon 90 days' notice.

Section 3. Execution of Instruments. All checks, drafts, notes acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Association or, in the absence of any such resolution applicable to such instrument, by the President or the Secretary/Treasurer.

## ARTICLE V: Obligation of Unit Owners

Section 1. Assessments. All unit owners shall pay to the Association, or if a Managing Agent is appointed, to the Managing Agent, in advance, when due, the quarter-annual assessments against their respective units for Common Expenses of the Townhomes in accordance with the Declaration. The assessment is delinquent if not received on or before the first day of the quarter that it is due. If any unit owner is delinquent in the payment of any assessment for a period in excess of ten days, a late charge of fifteen percent of the delinquent assessment shall be payable for each month of delinquency beginning with the initial month. In the event any unit owner is delinquent in the payment of any quarter-annual assessment for a period in excess of thirty days, including any late charge due thereon, the Association (or Managing Agent, if appointed) may declare the entire assessment for the next 12 full calendar months with respect to such unit to be immediately due and payable.

Section 2. Maintenance of Units. In addition to the repair and maintenance responsibilities and obligations created by the Declaration, every unit owner shall, at his own expense and at all times, repair, maintain, and keep the private elements of his unit, including, without limitation, all internal installations therein, such as water, electricity, telephone, sewer, sanitation, air conditioning, lights and all other fixtures and accessories belonging to such unit, and the interior decorated or finished surfaces of all walls, floors and ceilings of such unit, in good order and condition except as otherwise provided by law of the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and, in case of

such failure after reasonable notice to perform, shall reimburse to the Association promptly on demand for all expenses incurred by the Association in performing any such work authorized by the Association or the Managing Agent. In addition, each unit owner shall maintain all basement walls and floors surrounding his unit to prevent water leakage into the unit or adjoining units, and shall keep clean all interior and exterior windows and any appurtenant garage areas, storage areas, and patio areas. Every unit owner and occupant shall reimburse the Association promptly on demand for all expenses incurred by the Association in repairing or replacing any loss or damage to the common elements, where caused by such owner or occupant or by their guests or members of their households, or incurred for cleaning or repairing appurtenant limited common elements. Each unit owner shall give prompt notice to the Association or Managing Agent of any loss or damage or other defect in the Townhomes when discovered.

Section 3. Use of Townhomes.

(a) Each unit of the Townhomes shall be used solely for one family residential purposes.

(b) All common elements of the Townhomes shall be used solely for their respective purposes as designed.

(c) No unit owner or occupant shall place, store or maintain in the common elements any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements or permit said elements to be unsightly or disorderly.

(d) Every unit owner and occupant shall at all times keep his unit in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority of the Association applicable to the Townhomes.

(e) No unit owner or occupant shall make or suffer any waste or unlawful, improper or offensive use of his or her unit or the Townhomes nor alter or remove any furniture, furnishings or equipment of the common elements.

(f) No unit owner or occupant shall erect or place in the Townhomes any structure including fences, walls and patios (except as may be within the boundaries of a unit's private elements), nor make any additions or alterations to any common elements of the Townhomes, except as may be permitted in the Declaration and except in accordance with plans and specifications, including detailed plot plan, prepared by a licensed architect, if so required by the Association, unless approved by the Association, which approval may be given with accompanying restrictions as to the unit owner's duties of maintenance, repair and replacement of such improvements and any common elements affected thereby.

(g) No signs, posters or bills may be placed or maintained in the Townhomes unless approved by a majority of unit owners, except that an owner may place and maintain a "FOR SALE" sign in front of his or her building for a reasonable time, not to exceed 3 feet by 2 feet in size.

(h) No unit owner or occupant shall decorate or landscape any entrance or other planting area adjacent to his unit except in accordance with standards therefore established by the

Association or specific plans approved in writing by the Association, which standards or approval may be given with accompanying restrictions as to the unit owner's duties of maintenance, repair and replacement of such decorating or landscaping and any common elements affected thereby.

(i) All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions and amplifiers that may disturb other occupants.

(j) No garments, rugs or other objects shall be hung from windows or facades of the Townhome or in other areas within view of other occupants.

(k) No rugs or other objects shall be dusted or shaken from windows of the Townhomes or cleaned by beating or sweeping on any exterior part of the Townhomes.

(l) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the Townhomes, except in the areas provided for such purpose.

(m) No livestock, poultry, rabbits, snakes or other such animals shall be allowed or kept in any part of the Townhomes. Dogs, cats, small cages animals or small birds shall be allowed, subject to regulation by the Association, including regulation as to the number thereof.

(n) No unit owner or occupant shall, without the written approval of the Association, install any wiring for electrical or telephone installations, television antenna, machines or air conditioning units, awnings, exterior light fixtures or other equipment or appurtenances whatsoever on the exterior of the Townhomes or protruding through the walls, windows or roof thereof, except as may have been installed in the original construction of a unit's private elements.

(o) Nothing shall be allowed, done or kept in any units or common elements of the Townhomes, which would cause any increase in the ordinary rates or the cancellation or invalidation of any insurance thereof maintained by or for the Association.

Section 4. Townhomes Rules. The Association may adopt, amend or repeal any rules and regulations governing details of the operation and use of the Townhomes not inconsistent with any provision of law, the Declaration or these Bylaws.

Section 5. Expenses of Enforcement. Every unit owner shall pay to the Association promptly on demand all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent assessments against such unit, foreclosing its lien therefore or enforcing any provisions of the Declaration, these Bylaws or the Rules against such owner or any occupant of such unit.

Section 6. Record Ownership. Every unit owner shall promptly cause to be duly recorded the deed, assignment or other conveyance to him of such unit, or other evidence of his title thereto, and shall file a copy of same with the Association, and the Secretary shall maintain all such information in the record of ownership of the Association.

Section 7. Mortgages. Any unit owner who mortgages his or her unit, or any interest therein, shall notify the Association of the name and address of his or her mortgagee, and also of the

release of such mortgage, and the Secretary shall maintain all such information In the record of ownership of the Association. The Association or Managing Agent at the request of prospective purchaser of any unit, or interest therein, shall report to such person the amount of any assessments against such unit then due and unpaid.

## ARTICLE V1: Miscellaneous

Section 1. Amendment. These Bylaws may be amended in any respect not inconsistent with provisions of law or the Declaration by vote of not less than all of the unit owners (as defined in the Declaration) at any meeting of the Association duly called for such purpose.

Section 2. Interpretation. In case any provision of these Bylaws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect.

Section 3. Enforcement. Violation of the provisions of the Declaration, these Bylaws or any Townhomes Rules may be remedied in any court of law or equity having jurisdiction thereof by the Association or its managing agent or administrator, or any unit owner or owners entitled to relief, with the remedies available to such person or persons including damages, restraining order, injunction, accounting, lien enforcement and specific performance, or any combination thereof.

Section 4. Developer's Rights. During the period of control of the Townhomes by the Developer, the Developer shall have the right to enforce the provisions of the Declaration, Bylaws, and Townhomes Rules adopted, amended and repealed from time to time by the Association.

**(CERTIFICATION OF ADOPTION ON THE FOLLOWING PAGE)**

## Certificate of Adoption

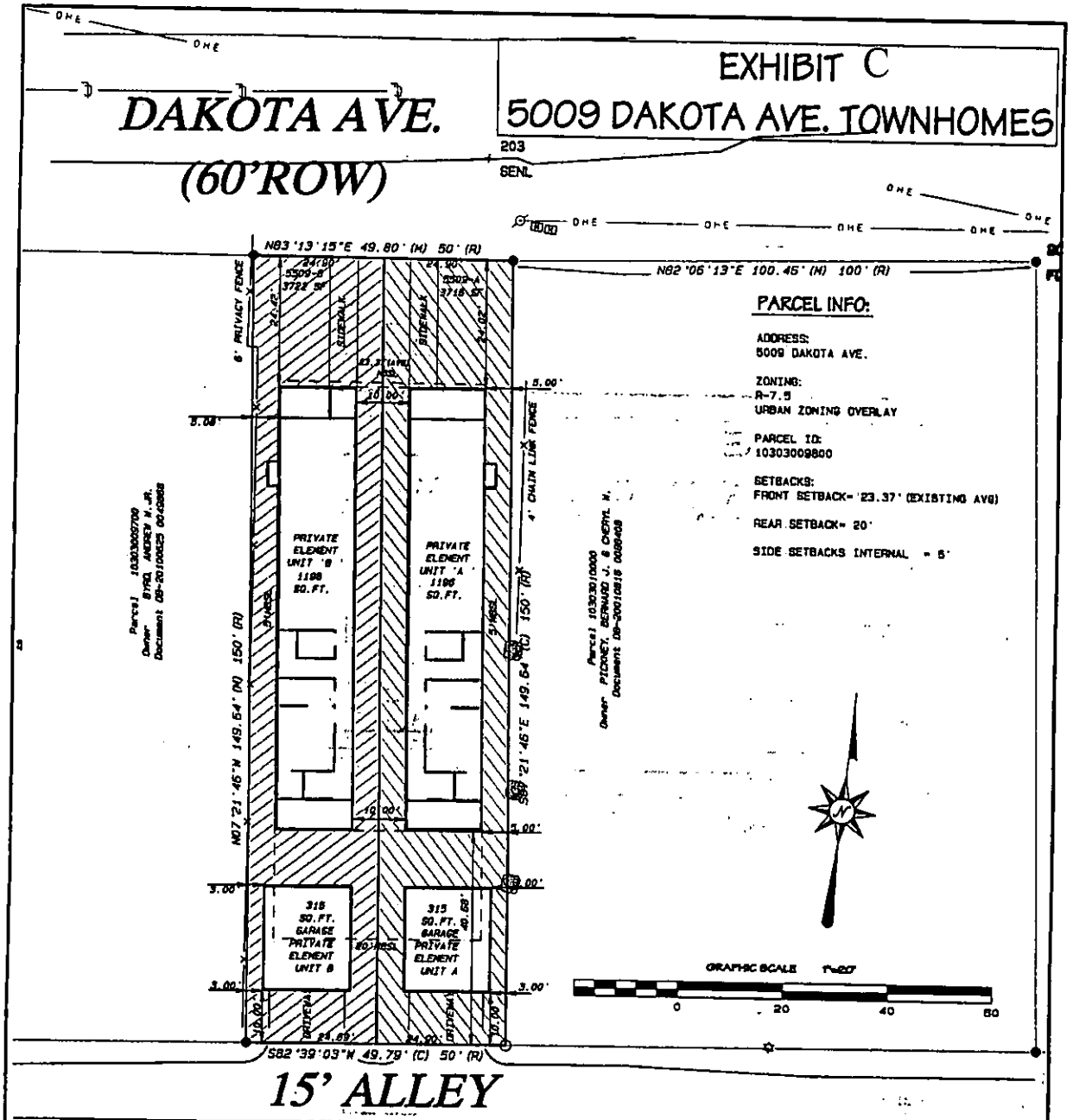
The undersigned Developer and owner of Property defined in the Declaration and upon which all units of the Townhomes shall be constructed hereby adopts the foregoing as the Bylaws of 5009 Dakota Avenue Townhomes Homeowners Association, Inc. on the 27 day of Jan., 2014.

**ASPEN CONSTRUCTION, INC.**

By:_____
JOHN ZELENAK
Its: Pres.

# EXHIBIT C

## 5009 DAKOTA AVE. TOWNHOMES




LIMITED COMMON ELEMENT UNIT A - 5009A DAKOTA AVE. 2203 SQ FT

LIMITED COMMON ELEMENT UNIT B - 5009B DAKOTA AVE. 2211 SQ FT

**LEGEND:**

- ● FOUND IRON ROD (FOIR)
- ○ SET IRON ROD AND CAP
- TREE
- (M) MEASURED/FIELD
- (P) PLAT/RECORD
- (C) CALCULATED
- M.B.S.L. MINIMUM BUILDING SETBACK LINE
- SSMH SANITARY MANHOLE

GRAPHIC SCALE 1"=20'
0 20 40 60

ROGER HARRAH LS 2039

THIS SURVEY IS NOT A GENERAL PROPERTY SURVEY AS DEFINED UNDER RULE 0820-3-07.


Harrah & ASSOCIATES
SURVEYORS • PLANNERS
504 AUTUMN SPRINGS CT
SUITE 615
FRANKLIN, TN 37027
PHONE: (615) 778-0883
FAX: (615) 778-0885
E-MAIL: roger@harrahgroup.com


I hereby certify that is a category I survey with the ratio of precision of the unadjusted survey being greater than 1 in 10000. This survey was prepared in compliance with the current standards of practice adopted by the Tennessee State Board of Examiners for Land Surveyors.

Roger M. Harrah RLS #2039

HORIZONTAL PROPERTY REGIME
OF
5009-A AND 5009-B DAKOTA AVE., NASHVILLE, TENNESSEE
A PART OF LOT 18 ON THE REVISED PLAN ON THE REALITY SAVINGS BANK & TRUST COMPANY'S REVISED PLAN OF CHARLOTTE PARK AS RECORDED IN PLAT BOOK 421 PAGE 18 DAVIDSON COUNTY, TENNESSEE
FOR
ASPEN CONSTRUCTION

| | |
|---|---|
| DATE OF DRAWING: | 01-15-14 |
| MANAGER: RMH | CADD: JM |
| PROJECT NUMBER | T208-13-043 |
| FIELD BOOK NUMBER: | |
| LAST FIELD WORK: | 11-21-13 |
| CREW CHIEF (S): | ITH |
| COMPUTER FILE: | T208043_HPR.PRO |
| SCALE: 1"=20' | SHEET 1 OF 1 |

# EXHIBIT D: LEGAL OPINION


HALE AND HALE, PLC
ATTORNEYS AT LAW
FIRST TENNESSEE BANK BUILDING
231 PUBLIC SQUARE, SUITE 312
FRANKLIN, TENNESSEE 37064

BRENDA FRANKS HALE
DOUGLAS S. HALE*
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KATHLEEN HALE MCCLELLAN

OF COUNSEL
JANE CROCKETT FRANKS**

TELEPHONE (615)794-1312
FACSIMILE (615)790-9236
www.haleandhale.com

*TENNESSEE SUPREME COURT RULE 31
LISTED GENERAL CIVIL MEDIATOR

**TENNESSEE SUPREME COURT RULE 31
LISTED FAMILY MEDIATOR


January 27, 2014

Aspen Construction, Inc.
Attn: John Zelenak, President
10 Cadillac Drive, Suite 190
Brentwood, Tennessee 37027-5078

RE: 5009 Dakota Avenue Townhomes, a Horizontal Property Regime with Private Elements

Dear Mr. Zelenak:

I have reviewed the following:

1. Declaration of Covenants, Conditions and Restrictions for 5009 Dakota Avenue Townhomes, a Horizontal Property Regime with Private Elements, dated October 4, 2013, to be filed with the Register's Office for Davidson County, Tennessee.

2. Bylaws of 5009 Dakota Avenue Townhomes Association, Inc. attached as Exhibit B to the above Declaration, to be filed with the Register's Office for Davidson County, Tennessee.

3. Plat of 5009 Dakota Avenue Townhomes, attached as Exhibit C to the above Declaration, to be filed with the Register's Office for Davidson County, Tennessee.

4. Charter of 5009 Dakota Avenue Townhomes Association, Inc. a Tennessee not for profit corporation, dated January 27, 2014, to be created by the filing of the same with the Secretary of State of Tennessee, and to be filed with the Register's Office for Davidson County, Tennessee.

Each of the foregoing documents are incorporated herein by reference.

Based solely upon my review of these documents, I am of the opinion that all legal documents required pursuant to Tenn. Code Ann. §66-27-103(b) for the creation of a planned unit development under said statute have been prepared and that, upon recording the same with the Register's Office for Davidson County, Tennessee, a planned unit development will have been created pursuant to this statute.

Very truly yours,

HALE AND HALE, PLC

Douglas S. Hale

DSH: rm