This Document Prepared by:
Ortale Kelley Law Firm (PHP)
330 Commerce Street, Suite 110
Nashville, Tennessee, 37201

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

WHITE AVENUE FLATS

A PLANNED UNIT DEVELOPMENT
Horizontal Property Regime with Private Elements

DAVIDSON COUNTY, TENNESSEE

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
WHITE AVENUE FLATS
A Planned Unit Development
Horizontal Property Regime With Private Elements

This Declaration of Covenants, Conditions and Restrictions (the "**Declaration**") is made by **SNYDWOOD, GP** (the "**Declarant**"), and is as follows:

RECITALS:

A. The Property subject to this Horizontal Property Declaration is certain real property located in DAVIDSON COUNTY, Tennessee (the " Property"), more particularly described on Exhibit "A" attached hereto;

B. Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Property.

C. Declarant desires to develop the Property as a planned unit development, a horizontal property regime with private elements, pursuant to the Horizontal Property Act of the State of Tennessee, codified at Tenn. Code Ann. § 66-27-101 through 123 (the "Act"), establishing and maintaining thereon one or more single-family residential townhomes.

D. By the Recording of this Declaration, Declarant serves notice that the Property is subject to the terms and provisions of this Declaration.

NOW, THEREFORE, it is hereby declared: (i) that the Property (or any portion thereof) will be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying the Property (or any portion thereof) will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions.

This Declaration uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Declaration, the text will control.

ARTICLE 1
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration will have the meanings hereinafter specified:

"**Applicable Law**" means the statutes and public laws and ordinances in effect at the time a provision of the Restrictions is applied, and pertaining to the subject matter of the Restriction provision. Statutes and ordinances specifically referenced in the Restrictions are "Applicable Law" on the date of the Restrictions, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

"**Architectural Control Committee**" or "**ACC**" means the committee created pursuant to this Declaration to review and approve or deny plans for the construction, placement, modification, alteration or remodeling of any Improvements on a Townhome Lot. As provided in *Article 8* below, the Declarant

acts as the ACC and the ACC is not a committee of the Association (as the case may be) until the Declarant has assigned its right to appoint and remove all ACC members to the Association (as the case may be) in a Recorded written instrument.

"**Assessment**" or "**Assessments**" means assessments imposed by the Association under this Declaration.

"**Assessment Lot**" has the meaning set forth in *Section 7.09(b)*.

"**Association**" means White Avenue Flats Homeowners Association, Inc., a Tennessee non-profit corporation, which will be created by Declarant to exercise the authority and assume the powers specified in *Article 4* and elsewhere in this Declaration.

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

"**Bulk Rate Contract" or "Bulk Rate Contracts**" means one or more contracts which are entered into by the Association (as the case may be) for the provision of utility services or other services of any kind or nature to the Townhome Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services, wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial to all or a portion of the Property.

"**Bylaws**" means the Bylaws of the Association as adopted and as amended from time to time by a Majority of the Board. A copy of the Bylaws for Association is attached hereto as Exhibit "D." The Bylaws are incorporated herein by reference, as they may be amended from time to time.

"**Charter**" means the Corporate Charter of the Association, filed in the Office of the Secretary of State of Tennessee, as the same may be amended from time to time. A copy of the Charter for Association is attached hereto as Exhibit "C".

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

"**Community Systems**" means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials and installations and fixtures (including those based on, containing and serving future technological advances not now known), if installed by Declarant pursuant to any grant of easement or authority by Declarant within the Property.

"**Declarant**" means **SNYDWOOD, GP**, its successors or assigns; provided that any assignment(s) of the rights of **SNYDWOOD, GP,** as Declarant, must be expressly set forth in writing and Recorded.

Declarant enjoys special rights and privileges to help protect its investment in the Property. These special rights are described in this Declaration. Many of these

rights do not terminate until either Declarant: (i) has conveyed all Lots and Townhome Lots which may be created out of the Property; or (ii) voluntarily terminates these rights by a Recorded written instrument.

"**Design Guidelines**" means the standards for design, construction, landscaping, and exterior items placed on any Townhome Lot adopted pursuant to *Section 8.02(c)*, as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property. At Declarant's option, Declarant may adopt Design Guidelines for the Property or any portion thereof. Notwithstanding anything in this Declaration to the contrary, the Declarant will have no obligation to establish Design Guidelines for the Property or any portion thereof.

"**Development Period**" means the period of time beginning on the date when this Declaration has been Recorded, and ending eighteen (18) months after Declarant no longer owns any portion of the Property, unless earlier terminated by a Recorded written instrument executed by the Declarant. Declarant may terminate the Development Period by an instrument executed by Declarant and Recorded.

"**Homebuilder**" means an Owner (other than the Declarant) who acquires an unimproved Lot from Declarant for the construction of a single-family residence for resale to a third party.

"**Improvement**" means every structure and all additions to, or enhancement to, on any portion of the Property, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

"**Limited Common Elements**" means any Common Elements contiguous to and serving a single Townhome Lot or a certain number of Townhome Lots to the exclusion of other Townhome Lots (including without limitation any driveway appurtenant to a Townhome Lot), as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful Occupants of such Townhome Lot either in this Declaration, on Exhibit "B," or by a similar exhibit to any Supplementary Declaration hereto. As set forth in Tenn. Code Ann. § 66-27-102(12), Limited Common Elements located upon a Townhome Lot shall be deemed Private Elements.

"**Majority**" means more than half.

"**Manager**" has the meaning set forth in *Section 4.05(h)*.

"**Member**" means every person or entity that holds membership privileges in the Association.

"**Mortgage**" or "**Mortgage**" means any mortgage or deed of trust securing indebtedness and covering any Townhome Lot.

"**Mortgagee**" or "**Mortgagee**" means the holder of any Mortgage.

"**Owner**" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Townhome Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Townhome Lot pursuant to foreclosure of the lien of its Mortgage.

"**Private Element**" shall mean and refer to an entire Townhome Lot, including all improvements located thereon and all surrounding lot area within the boundaries of the Townhome Lot. As used herein, the term "Private Element" shall have the same meaning as the term, "Townhome Lot." As set forth in Tenn. Code Ann. § 66-27-102(12), Limited Common Elements located upon Private Elements shall be deemed to be Private Elements. Conveyance of fee simple title to a Townhome Lot shall constitute conveyance of fee simple ownership in that Private Element.

"**Record, Recording, Recordation and Recorded**" means recorded in the Register's Office of Davidson County, Tennessee.

"**Resident**" means an occupant or tenant of a Townhome Lot, regardless of whether the person owns the Townhome Lot.

"**Restrictions**" means the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, Bylaws, Rules and Regulations, or in any other rules and regulations promulgated by the Association pursuant to this Declaration, as adopted and amended from time to time. *See Table 1* for a summary of the Restrictions.

"**Rules and Regulations**" means any instrument, however denominated, which is adopted by the Board for the regulation and management of the Property and/or the Townhome Property (as the case may be), including any amendments to those instruments.

"**Site Plan**" shall mean and refer to the diagram, plan, survey, or plat of the Townhome Property presently submitted as well as any other diagrams, plans, surveys, or plats as may be submitted to this Declaration and the provisions of the act, which show the number, area and location of each Townhome Lot and other data necessary for identification. The current Site Plan for White Avenue Flats, as may be amended from time to time, attached hereto as Exhibit "B", and made a part hereof. No dedication to the public is intended by recording any Site Plan with this Declaration, except as otherwise provided by Declarant.

"**Solar Energy Device**" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

"**Townhome Assessments**" shall mean and refer to Assessments levied in accordance with Section 7.07 of this Declaration.

"**Townhome Building**" shall mean and refer to a single freestanding building constructed upon multiple Townhome Lots that comprises the individual, attached townhouses located on those Townhome Lots.

"**Townhome Property" or "Property"** shall mean and refer to the real property described in Exhibit "A" attached hereto, and depicted on Exhibit "B" attached hereto and incorporated herein, or described and depicted by any similar exhibits to any Recorded supplement to this Declaration. All tracts of Townhome Property shall together constitute the single Horizontal Property Regime with private elements created hereunder pursuant to the Act.

"**Townhome Lot**" shall mean and refer to an individual parcel of land located within the Townhome Property that is designated and shown as a "Unit" on Exhibit B, or any similar exhibit to any Recorded supplement to this Declaration, together with all rights, privileges, and interests appurtenant thereto and all improvements located thereon. Each Townhome Lot shall be identified by number on such Recorded

exhibit to this Declaration, and shall be conveyed by reference to that number. Each Townhome Lot shall constitute an individual "Private Element" as defined above. Conveyance of a Townhome Lot shall automatically convey the undivided memberships of the Townhome Lot Owner in the Association. Any Townhome Lot may be jointly or commonly owned in any entity or estate recognized under applicable law.

TABLE 1: RESTRICTIONS	
Declaration (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property.
Charter (Recorded)	Establishes the Association as Tennessee nonprofit corporations.
Bylaws (Recorded)	Governs the internal affairs of the Association, respectively, such as elections, meetings, etc.
Design Guidelines (if adopted)	Governs the design and architectural standards for the construction of Improvements and modifications thereto. The decision to adopt Design Guidelines is entirely discretionary to the Declarant.
Rules and Regulations (if adopted)	Regulates the use of property, activities, and conduct within the Property.
Board Resolutions	Establishes rules, policies, and procedures for the Property, Owners, and Association.

ARTICLE 2
GENERAL AND USE RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

2.01 General.

(a) Conditions and Restrictions. All Lots and Townhome Lots within the Property will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Restrictions.

(b) Ordinances. Ordinances and requirements imposed by local governmental authorities are applicable to all Lots and Townhome Lots within the Property. Compliance with the Restrictions is not a substitute for compliance with Applicable Law. Please be advised that the Restrictions do not purport to list or describe each restriction which may be applicable to a Townhome Lot located within the Property. Each Owner is advised to review all ordinances, requirements, regulations and encumbrances affecting the use and improvement of their Townhome Lot prior to submitting plans to the ACC for approval. Furthermore, approval by the ACC should not be construed by the Owner that any Improvement complies with the terms and provisions of any ordinances, requirements, regulations or encumbrances which may affect the Owner's Townhome Lot. Certain encumbrances may benefit parties whose interests are not addressed by the ACC.

NOTICE

The Restrictions are subject to change from time to time. By owning or occupying a Townhome Lot, you agree to remain in compliance with the Restrictions, as they may change from time to time.

2.02 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property, (collectively, the "**Conceptual Plans**") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and Improvements, including but not limited to any amenity centers, reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Homebuilder or other Declarant of any portion of the Property makes any representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Property and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans or any statements made by the Declarant or any of Declarant's representatives regarding the proposed land uses, or proposed or planned Improvements in making the decision to purchase any land or Improvements within the Property. Each Owner who acquires a Townhome Lot within the Property acknowledges that development of the Property will likely extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

2.03 Single-Family Residential Use. The Townhome Lots shall be used solely for private single-family residential purposes.

No professional, business, or commercial activity to which the general public is invited shall be conducted on any Townhome Lot, except an Owner or Resident may conduct business activities within a residence so long as: (a) such activity complies with Applicable Law; (b) the business activity is conducted without the employment of persons other than the residents of the home constructed in the Townhome Lot; (c) the business activity does not involve customers, contractors, clients, or the general public visiting the residence to conduct activities related to the business; (d) the existence or operation of the business activity is not apparent or detectable by sight, i.e., no sign may be erected advertising the business on any Townhome Lot, sound, or smell from outside the residence; (e) the business activity does not involve door-to-door solicitation of residents within the Property; (f) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (g) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property as may be determined in the sole discretion of the Board; and (h) the business does not require the installation of any machinery other than that customary to normal household operations. In addition, for the purpose of obtaining any business or commercial license, neither the residence nor Townhome Lot will be considered open to the public. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (ii) a license is required.

Leasing of a residence shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Homebuilder.

Notwithstanding any provision in this Declaration to the contrary, until the earlier to occur of expiration or termination of the Development Period, or forty (40) years from the date this Declaration is Recorded:

A. Declarant and/or its licensees may construct and maintain upon portions of the Common Elements, as applicable, and any Townhome Lot owned by the Declarant such facilities and may conduct such activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single family residences constructed upon the Lots and Townhome Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its licensees shall have an easement over and across the Common Elements for access and use of such facilities at no charge; and

B. Declarant and/or its licensees will have an access easement over and across the Common Elements for the purpose of making, constructing and installing Improvements upon the Common Elements.

2.04 Subdividing. No Townhome Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the ACC; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Townhome Lot and convey any easements or other interests less than the whole, all without the approval of the ACC.

2.05 Hazardous Activities. No activities may be conducted on or within the Property and no Improvements may be constructed on or within any portion of the Property which, in the opinion of the Board, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Property unless discharged in conjunction with an event approved in advance by the Board and no open fires may be lighted or permitted except within safe and well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies. The use of outdoor grills within the Townhome Lots, underneath any portion of an Improvement located on a Townhome Lot or within ten (10) feet of any combustible Improvement is strictly prohibited. The Board may adopt reasonable Rules and Regulations governing the use of outdoor grills on portions of the Common Elements. The use of an outdoor grill shall at all times comply with all applicable governmental fire safety codes, ordinances, and rules.

2.06 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Elements, or the Improvements located thereon, without the prior written approval of the Board.

2.07 Mining and Drilling. Unless otherwise provided in *Section 10.16*, no portion of the Property may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property by the Declarant. Furthermore, this provision will not be interpreted to prevent the drilling of water wells by the Declarant or otherwise approved in advance by the ACC which are required to provide water to all or any portion of the Property. All water wells must also be approved in advance by any applicable regulatory authority.

2.08 Noise. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its Residents.

2.09 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such as pot-bellied pigs, miniature horses, exotic snakes or lizards, monkeys, chickens or other exotic animals). The Board may determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner may keep on such Owner's Townhome Lot more than three (3) cats and dogs, in the aggregate. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Owner's residence, or the fenced yard space associated therewith, unless confined to a leash. Association may restrict pets residing on Townhome Lots to certain areas on the Townhome Property. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and inoculated as required by Applicable Law. If the Board determines, in its sole discretion, that a pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Property.

2.10 Rubbish and Debris. As determined by the Board, no rubbish or debris of any kind may be placed or permitted to accumulate on or within the Property, and no odors will be permitted to arise therefrom so as to render all or any portion of the Property unsanitary, unsightly, offensive, or detrimental to any other property or Residents. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity, the Association.

2.11 Intentionally Omitted

2.12 Townhome Lot and Common Element Maintenance.

(a) Obligations of Townhome Lot Owners. Each Townhome Lot Owner, at their own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within the interior of the townhouse located on such Townhome Lot, including plumbing, pipes, wiring, HVAC, appliances, and structural components (including slabs). In addition, each Townhome Lot Owner shall be responsible for all exterior glass, changing light bulbs in exterior lighting on the townhouse (bulbs to be of a type and color acceptable to the Board), windows, including storm windows, screens, and doors, including storm doors, and all portions of the townhouse for which the Association is not responsible.

(b) Obligations of Association.

(1) The Association shall be responsible for maintenance of, repairs to and replacements within the Common Elements; for landscaping and yard maintenance on the Townhome Lots; and for maintenance and repair of the exteriors of the Townhome Buildings. Except as provided in subsection (2) below, the Association shall be responsible for exterior landscaping to the extent such landscaping was installed by the Declarant, a Homebuilder, the Association; for maintenance and repair of driveways, walkways, porches, decks, and patios located on the Property; and for painting and maintenance and repair of roofs, exterior walls, gutters, down-spouts, exterior trim, exterior caulking and other exterior repairs located on the Property; provided that such exterior maintenance responsibilities shall not include

glass, windows, including storm windows, screens, doors and storm doors, which shall be the responsibility of the Townhome Lot Owner. The costs incurred by the Association in meeting its obligations and responsibilities described in this subsection shall be part of the Common Expenses, subject to the terms of this Declaration, the Bylaws, rules and regulations of the Association.

(2) The Association shall not provide maintenance, care, repair and replacement for interior courtyards, elevated decks and/or balconies, and porches. Interior courtyards, elevated decks and/or balconies, and porches shall be maintained by the Townhome Lot Owner of the particular Townhome Lot involved. The Association shall have the right at any time to plant, replace, maintain and cultivate shrubs, trees, grass, plantings and other landscaping upon the Limited Common Elements. The Townhome Lot Owners shall obtain prior written approval from the Association before modifying any plantings or landscaping improvements located upon the Common Elements which are the responsibility of the Association.

(c) Notwithstanding the foregoing, if the need for exterior maintenance and repair by the Association as required by this paragraph is caused by the willful or negligent conduct or act a Townhome Lot Owner, his/her family, guest, invitees, or other Persons using or occupying his/her Townhome Lot with his/her express or implied permission, the cost of such repair or maintenance shall be assessed against such Townhome Lot Owner and shall be due and payable thirty (30) days from the date of notice thereof, such Assessment to be collected and enforced as provided in Section 7 of this Declaration. Such Assessment shall not require the approval of any of the Members. For the sole purpose of performing the exterior maintenance upon each Townhome Lot required by this Section 4.13, the duly authorized employees or agents of the Association shall have the right, after reasonable notice to the Townhome Lot Owner, to enter upon any Townhome Lot at reasonable hours of any day except Sunday. Moreover, if, during the course of performing the maintenance of a Townhome Lot, the Association discovers that maintenance, repair or replacement is required of an item which is the Townhome Lot Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Townhome Lot Owner and at the Townhome Lot Owner's expense without prior notice to the Townhome Lot Owner.

In addition, the duly authorized agents or employees of the Association shall have the right to enter in or upon any Townhome Lot, without notice to the Owner thereof, when, in the judgment of the Association, acting through the Board, such entrance is necessary to prevent damage to such Townhome Lot, surrounding Townhome Lots or Common Elements by fire, criminal act, natural disaster, or other similar emergency.

2.13 Street Landscape Area; Owner's Obligation to Maintain Landscaping. Each Owner of a Lot will be responsible, at such Owner's sole cost and expense, for maintaining mowing, replacing, pruning, and irrigating the landscaping between the boundary of such Owner's Lot and the curb of any adjacent right-of-way, street or alley (the "**ST Landscape Area**") unless the responsibility for maintaining the ST Landscape Area is performed by the Association.

2.14 Antennas. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, shall be erected, maintained or placed on a Townhome Lot without the prior written approval of the ACC; provided, however, that:

(a) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or

(b) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(c) an antenna that is designed to receive television or radio broadcast signals;

(collectively, (a) through (c) are referred to herein as the "**Permitted Antennas**") will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the ACC, consistent with Applicable Law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Property.

2.15 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Townhome Lot and shall not encroach upon any street, Common Elements, or any other portion of the Property. A Permitted Antenna shall be installed in a location on the Townhome Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Property, other than the Townhome Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the ACC are as follows:

(a) Attached to the back of the principal single-family residence constructed on the Townhome Lot, with no part of the Permitted Antenna any higher than the roof fascia, soffit, or bargeboard and screened from view of adjacent Lots and Townhome Lots and the street; then

(b) Attached to the side of the principal single-family residence constructed on the Townhome Lot, with no part of the Permitted Antenna any higher than the roof fascia, soffit, or bargeboard and screened from view of adjacent Lots and Townhome Lots and the street.

The ACC may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas. To the extent that any of the foregoing provisions of this Declaration or provisions of the rules and regulations adopted by the Board with respect to satellite dishes and antennas is not permitted under the Federal Communications Commission ("FCC") rules and regulations, the remaining portion of this Section 2.16 shall survive independently to the extent permissible under the FCC rules and regulations.

Satellite dishes one meter or less in diameter, e.g., DirecTV or Dish satellite dishes, are permitted, HOWEVER, you are required to comply with the rules regarding installation and placement. These rules may be modified by the ACC from time to time. Please contact the ACC for the current rules regarding installation and placement.

2.16 Signs. Unless otherwise allowed by Applicable Law, no sign of any kind may be displayed to the public view on Townhome Lot without the prior written approval of the ACC, except for:

(a) signs which are expressly permitted pursuant to the Design Guidelines or Rules and Regulations;

(b) signs which are part of Declarant or Homebuilder's overall marketing, sale, or construction plans or activities for the Property;

(c) one (1) temporary "For Sale" sign placed on the Townhome Lot. The sign must be professionally made and shall be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from the finished grade of the Townhome Lot at the spot where the sign is located may not exceed four (4) feet. The sign must be removed within two (2) business days following the sale of the Townhome Lot;

(d) political signs may be erected provided the sign: (a) is erected no earlier than the ninetieth (90th) day before the date of the election to which the sign relates; (b) is removed no later than the 10th day after the date of the election to which the sign relates; and (c) is ground-mounted. Only one sign may be erected for each candidate or ballot item; *provided, however,* that notwithstanding any contrary restriction contained in this subsection (d), political signs erected in compliance with the "Tennessee Freedom of Speech Act," Tenn. Code Ann. § 2-7-143 (as it may be amended from time to time) shall be deemed to comply with the Declaration;

(e) a religious item on the entry door or door frame of a residence (which may not extend beyond the outer edge of the door frame), provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five square inches;

(f) permits as may be required by legal proceedings; and

(g) permits as may be required by any governmental entity.

An Owner or Resident will be permitted to post a "no soliciting" and "security warning" sign near or on the front door to their residence, provided, that the sign may not exceed twenty-five (25) square inches.

For Lease and For Rent signs are expressly prohibited.

2.17 Flags: Approval Requirements. An Owner is permitted to display the flag of the United States of America, the flag of the State of Tennessee, an official or replica flag of any branch of the United States Military, or one (1) flag with official insignia of a college or university (**"Permitted Flag"**) and permitted to install a flagpole no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence (**"Permitted Flagpole"**). Only two (2) Permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the ACC. Approval by the ACC is required prior to installing vertical freestanding flagpoles in the front or back yard area of any Lot (**"Freestanding Flagpole"**).

2.18 Flags: Installation and Display. Unless otherwise approved in advance and in writing by the ACC, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

(a) No more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per Townhome Lot, on which only Permitted Flags may be displayed;

(b) Any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height

(c) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'×5');

(d) With the exception of flags displayed on Common Elements or any Townhome Lot which is being used for marketing purposes by the Declarant or a Homebuilder, the flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Tennessee must be displayed in accordance with Tennessee law;

(e) The display of a Permitted Flag, or the location and construction of a Permitted Flagpole or Freestanding Flagpole must comply with all Applicable Law;

(f) Each Permitted Flagpole and Freestanding Flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction thereof and harmonious with the residence;

(g) Permitted Flag, Permitted Flagpole, and Freestanding Flagpole must be maintained in good condition and any deteriorated Permitted Flag, or deteriorated or structurally unsafe Permitted Flagpole or Freestanding Flagpole must be repaired, replaced or removed;

(h) A Permitted Flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring Townhome Lot; and

(i) Any external halyard of a Permitted Flagpole or Freestanding Flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the Permitted Flagpole or Freestanding Flagpole.

2.19 Tanks. The ACC must approve any tank used or proposed in connection with a residence, including tanks for storage of fuel, water, oil, or liquid petroleum gas (LPG), and including swimming pool filter tanks. No elevated tanks of any kind may be erected, placed or permitted on any Townhome Lot without the advance written approval of the ACC. All permitted tanks must be screened from view in accordance with a screening plan approved in advance by the ACC. This provision will not apply to a tank used to operate a standard residential gas grill.

2.20 Temporary Structures. No tent, shack, or other temporary building, Improvement, or structure shall be placed upon the Property without the prior written approval of the ACC; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for Declarant, Homebuilders, architects, and foremen during actual construction may be maintained with the prior approval of Declarant (unless placed by the Declarant), approval to include the nature, size, duration, and location of such structure.

2.21 Outside Storage Buildings. Intentionally Omitted.

2.22 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Board will be permitted to remain on any Townhome Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, and facilities for drying or airing clothing or other household items shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No

racing vehicles or other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any Townhome Lot or to be parked on any roadway within the Property, or Common Elements.

No Owner or occupant shall keep more than two (2) vehicles parked in said Owner's driveway at any time; provided, however, that if a Townhome Lot only has a one-car garage, then said Owner or occupant shall not park more than one vehicle in said driveway. All other vehicles must be parked in garages, designated parking spaces, or other areas authorized in writing by the Board. Vehicles shall not be parked on any lawn, yard, private street or alley.

Unless approved in writing by the Board, residents of Townhome Lots with garages and/or driveways shall park only in the garage or driveway appurtenant to the Townhome Lot. There shall also be parking spaces located upon the Common Elements, which shall be utilized for parking by residents of Townhome Lots which do not have a garage or driveway. The Board has the authority to assign one or more parking spaces for the exclusive use of a Townhome Lot, and to designate guest parking spaces or guest parking areas within the Common Element parking area.

Parking upon any public streets or dedicated rights-of-way of the Property shall be in compliance with applicable laws, ordinances, codes, and regulations of the City of Lebanon. The Board may also adopt reasonable rules and regulations regarding parking within the Property, respectively, which shall be in compliance with this section.

Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. Each garage should be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible with the exception of a garage temporarily converted to a sales center by the Declarant or any Homebuilder.

No vehicle that does not have a current license tag or is inoperable may be parked on or within the Property. In addition, no vehicle may be parked upon or within any portion of the Property for a period of thirty (30) consecutive days or more without being driven during said period, unless prior written permission has been obtained from the Board. Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "cars' or "passenger vehicle" classification by the Tennessee Department of Motor Vehicles), recreational vehicles (including, without limitation, RVs, campers, and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors are also prohibited from being parked upon any portion of the Property, except in areas, if any, that may be designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Common Elements during normal business hours for the purpose of serving any Townhome Lot, the Common Elements; provided, however, no such vehicle shall remain on the Common Elements overnight or for any purpose unless prior written consent of the Board is first obtained. Notwithstanding any provision to the contrary above, all emergency response and local, state, and federal law enforcement vehicles may be parked on the Property so long as they are either owned by an Owner or occupant or they are parked on the Property in furtherance of emergency response or law enforcement purposes.

If any vehicle is parked on any portion of the Property in violation of this subsection or in violation of Rules or Regulations adopted by the Board, a member of the Board, or other agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of the person or entity that will do the towing or booting and the name and telephone number of a person to

contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or other agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the Owner or user of the vehicle. If a vehicle is parked in a fire lane or a space designated for handicapped parking, is blocking another vehicle or access to another parking space, is obstructing the flow of traffic, is parked in a parking space which has been assigned as exclusively serving another Townhome Lot, or otherwise creates a hazardous condition or is an obstruction to the safety or health of other persons on the Property, no notice shall be required and the Board or agent(s) thereof may have the vehicle towed immediately. If a vehicle is towed or booted in accordance with this subsection or if a vehicle is seized or towed by any other Person that is not an employee or agent of the Association then neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage as a result of the seizure or towing activity. Also, the Association and its officers or agents, shall not be liable for any vehicle that is stolen or otherwise unlawfully removed from property within the Property by a third party. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions under the rules and regulations or remedies at law or in equity, rather than exercise its authority to tow or boot.

2.23 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes, travel trailers or recreational vehicles shall be parked or placed on any street right of way, Townhome Lot, or used as a residence, either temporary or permanent, at any time. However, such vehicles may be parked temporarily for a period not to exceed seventy-two (72) consecutive hours during each two (2)-month period.

2.24 Basketball Goals; Permanent and Portable. Permanent basketball goals are permitted in the front of the residence on a Lot provided the basketball goal is located approximately twenty feet (20') from the street curb. Permanent basketball goals are not permitted in any street right-of-way. The basketball goal backboard must be perpendicular to the street and mounted on a black metal pole permanently installed in the ground. Portable basketball goals are permitted but must be stored to the rear of the Townhome Lot or inside garage from sundown to sunrise. Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals, whether permanent or portable, must be approved by the ACC prior to being placed on any Townhome Lot.

2.25 Compliance with Restrictions. Each Owner, his or her family, Residents of a Townhome Lot, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of the Restrictions and may result in a fine against the Owner in accordance with *Section 7.12* of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Association, the ACC, or by an aggrieved Owner. Without limiting any rights or powers of the Association or the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be assessed against and chargeable to the Owner's Lot(s) or Townhome Lot(s). Any such amounts assessed and chargeable against a Townhome Lot shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Townhome Lots. **Each such Owner shall release and hold harmless the Association and their officers, directors, employees and agents from any cost, loss, damage, expense, liability,**

claim or cause of action incurred or that may arise by reason of the acts of the Association, or activities under this Section (including any cost, loss, damage, expense, liability, claim or cause of action arising out of negligence by the Association in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the gross negligence or willful misconduct of the Association. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

2.26 Liability of Owners for Damage to Common Elements. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Elements without the prior written approval of the Board (and the Declarant during the Development Period). Each Owner shall be liable to the Association for any and all damages to: (a) the Common Elements and any Improvements constructed thereon; or (b) any Improvements constructed on any Townhome Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other Resident of such Owner's Townhome Lot, or any guest or invitee of such Owner or Resident. The full cost of all repairs of such damage shall be an Individual Assessment against such Owner's Townhome Lot, secured by a lien against such Owner's Townhome Lot and collectable in the same manner as provided in *Section 7.10* of this Declaration.

2.27 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of the Restrictions. Any Owner acquiring a Townhome Lot in reliance on one or more of the Restrictions shall assume all risks of the validity and enforceability thereof and, by acquiring the Townhome Lot, agrees to hold Declarant harmless therefrom.

2.28 Party Walls. A fence or wall located on or near the dividing line between two (2) Townhome Lots and intended to benefit both Townhome Lots constitutes a "Party Wall" and, to the extent not inconsistent with the provisions of this *Section 2.28*, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

(a) Encroachments & Easement. If the Party Wall is on one Townhome Lot due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this *Section 2.27.* Each Townhome Lot sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands. Each Townhome Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

(b) Right to Repair. If the Party Wall is damaged or destroyed from any cause, the Owner of either Townhome Lot may repair or rebuild the Party Wall to its previous condition, and the Owners of both Townhome Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall. No Party Wall may be constructed, repaired, or rebuilt without the advance written approval of the ACC in accordance with Article 7 of this Declaration.

(c) Maintenance Costs. The Owners of the adjoining Lots and Townhome Lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is solely responsible for damage to or destruction of the Party Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Register's Office for Davidson County, Tennessee, and has the right to foreclose the lien as if it were a mechanic's lien. The right of

an Owner to require contribution from another Owner under this *Section 2.27* is appurtenant to the Townhome Lot and passes to the Owner's successors in title.

(d) Alterations. The Owner of a Townhome Lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the adjoining Townhome Lot. The Party Wall will always remain in the same location as when erected unless otherwise approved by the Owner of each Townhome Lot sharing the Party Wall and the ACC.

2.29 Playscapes and Sports Courts. Playscapes and Sport Courts are permissible at the sole discretion of the ACC. If allowed, these facilities must be properly sited and screened so as to minimize the visual and audio impact of the facility on adjacent properties. Sport Courts may not be lighted or enclosed with netting. Tennis courts are not permitted.

2.30 Decorations and Lighting. Unless otherwise permitted by *Section 2.16(e)*, no decorative appurtenances such as sculptures, birdbaths and birdhouses, fountains, or other decorative embellishments shall be placed on the residence or on the front yard or on any other portion of a Townhome Lot which is visible from any street, unless such specific items have been approved in writing by the ACC. Customary seasonal decorations for holidays are permitted without approval by the ACC but shall be removed within thirty (30) days of the applicable holiday. Outside lighting fixtures shall be placed so as to illuminate only the yard of the applicable Townhome Lot and so as not to affect or reflect into surrounding residences or yards. No mercury vapor, sodium or halogen light shall be installed on any Townhome Lot which is visible from any street unless otherwise approved by the ACC.

2.31 Leasing. Nothing in this Declaration shall prevent the leasing of any Townhome Lot and the Improvements thereon by the Owner thereof for residential purposes. "Leasing" for purposes of this Declaration, is defined as the following: (1) any short-term occupancy of a Unit for a period of less than thirty (30) continuous days; (2) vacation-type occupancy; or (3) the regular, exclusive monthly, quarterly, or annual occupancy of a Unit, by any person or persons other than the Owner, or any lease-purchase or similar agreement, regardless of whether the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument. Leasing is permitted pursuant to this Section. The Units may be leased in whole or partially, whereby a tenant may lease one bedroom within a Unit. In the event of a regular, exclusive monthly, quarterly, or annual occupancy of a Unit, by any person or persons other than the Owner, notice of such lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner. The Owner must make available to the lessee copies of the Documents. Every Owner shall cause all occupants of his or her residence to comply with the Documents, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a residence are fully liable and may be sanctioned for any violation of the Documents." This Section shall not apply with respect to any Townhome Lot subject to a mortgage or deed of trust which is insured or guaranteed by the Federal Housing Administration or the Veterans Administration, or where the provisions of this Section are otherwise prohibited by law.

ARTICLE 3
CONSTRUCTION RESTRICTIONS

3.01 Approval for Construction. Unless prosecuted by the Declarant, no Improvements shall be constructed upon any Townhome Lot without the prior written approval of the ACC in accordance with *Article 8* of this Declaration.

3.02 Fences; Sidewalks. Except for fences installed by the Declarant or a Homebuilder during original construction on a Townhome Lot, fences, walls and hedges of any size or composition are strictly prohibited on Townhome Lots or the Common Elements. Otherwise, all fences and walls installed or constructed on a Lot shall comply with all Applicable Law and the rules and regulations promulgated by the ACC. Unless otherwise approved by the ACC, no fence, wall or hedge will be erected or maintained on any Lot nearer to the street than the front elevation of the residence constructed on the Lot, except for fences erected in conjunction with the model homes or sales offices, and shall only use materials approved by the ACC. The ACC will have the sole discretion to determine the front elevation of the residence for the purpose of this *Section 3.02*. No chain-link, metal cloth or agricultural fences may be installed or maintained on a Lot.

3.03 Trash Containers. Trash containers and recycling bins must be stored in one of the following locations:

(a) Inside the garage of the single-family residence constructed on the Townhome Lot; or

(b) Behind the single-family residence, retaining wall, or fence constructed on the Townhome Lot, or concealed by landscaping, in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Townhome Lot.

The Board shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

3.04 Drainage. There shall be no interference with the established drainage patterns over any of the Property, including the Townhome Lots, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved in advance by the ACC. Specifically, and not by way of limitation, no Improvement, including landscaping, may be installed which impedes the proper drainage of water between Townhome Lots.

3.05 Construction Activities. The Restrictions will not be construed or applied so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by the Declarant or a Homebuilder upon or within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of the Restrictions by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. If during the course of construction upon any Townhome Lot there is excessive accumulation of debris of any kind which would render the Townhome Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the ACC may contract for or cause such debris to be removed, and the Owner of the Townhome Lot will be liable for all reasonable expenses incurred in connection therewith.

3.06 Roofing. The roofs of all Improvements shall consist of materials that have been approved by the ACC. In addition, roofs of buildings may be constructed with "**Energy Efficiency Roofing**" with the advance written approval of the ACC. For the purpose of this *Section 3.06*, "Energy Efficiency Roofing" means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities. The ACC will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles

used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth the Restrictions. In conjunction with any such approval process, the Owner should submit information which will enable the ACC to confirm the criteria set forth in this *Section 3.06*. Any other type of roofing material shall be permitted only with the advance written approval of the ACC.

3.07 Swimming Pools. Any swimming pool constructed on a Lot must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies all Applicable Law and be approved in advance by the ACC. Nothing in this *Section 3.07* is intended or shall be construed to limit or affect an Owner's obligation to comply with any Applicable Law concerning swimming pool enclosure requirements. Above-ground or temporary swimming pools are strictly prohibited on any Lot. Any type of swimming pool is strictly prohibited on all Townhome Lots.

3.08 Compliance with Setbacks. No residence may be constructed on any Lot nearer to a street than the minimum building setback lines shown on the Plat and no building shall be located on any utility easements.

3.09 Solar Energy Device. Solar Energy Devices may be installed on Improvements located on the Lots (but not the Townhome Lots) with the advance written approval of the ACC in accordance with the procedures set forth below.

(a) Application. To obtain ACC approval of a Solar Energy Device, the Owner shall provide the ACC with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application. The Solar Application shall be submitted in accordance with the provisions of *Article 8* of the Declaration.

(b) Approval Process. The ACC will review the Solar Application in accordance with the terms and provisions of *Article 8* of the Declaration. The ACC will approve a Solar Energy Device if the Solar Application complies with *Section 3.09(c)* below **UNLESS** the ACC makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 3.09(c)*, will create a condition that substantially interferes with the use and enjoyment of the property within the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The ACC's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/Applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on Common Elements or property maintained by the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 3.09* when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the ACC, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

(i) The Solar Energy Device must be located on the roof of the residence located on the Owner's Townhome Lot, entirely within a fenced area of the Owner's Townhome Lot, or entirely within a fenced patio located on the Owner's Townhome Lot. If the Solar Energy Device will be located on the roof of the residence, the ACC may designate the location for placement unless the location

proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the Solar Energy Device if installed in the location designated by the ACC. If the Owner desires to contest the alternate location proposed by the ACC, the Owner should submit information to the ACC which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Townhome Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

(ii) If the Solar Energy Device is mounted on the roof of the principal residence located on the Owner's Townhome Lot, then: (A) the Solar Energy Device may not extend higher than or beyond the roofline; (B) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; (C) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

3.10 Utility Lines. No sewer, drainage or water lines shall be constructed, placed or maintained anywhere in or upon any portion of the Property other than within buildings or structures unless the same shall be constructed, placed or maintained underground. No wires or other devices for the communication or transmission of electric current, power, or signals including telephone, television, microwave or radio signals, shall be constructed, placed or maintained anywhere in or upon any portion of the Property other than within buildings or structures unless the same shall be contained in conduits or cables constructed, placed or maintained underground or concealed in or under buildings or other structures.

3.11 Water Quality Facilities, Drainage Facilities and Drainage Ponds. The Property may include, now or in the future, one or more water quality facilities, sedimentation, drainage and detention facilities, or ponds which serve all or a portion of the Property and are inspected, maintained and administered by the in accordance with all Applicable Law. Access to these facilities and ponds is limited to persons engaged by the Association or its agents to periodically maintain such facilities. Each Owner is advised that the water quality facilities, sedimentation, drainage and detention facilities and ponds are an active utility feature integral to the proper operation of the Property and may periodically hold standing water. Each Owner is advised that entry into the water quality facilities, sedimentation, drainage and detention facilities or ponds may result in injury and is a violation of the Rules and Regulations.

ARTICLE 4
WHITE AVENUE FLATS HOMEOWNERS ASSOCIATION, INC.

4.01 Organization. The Association are nonprofit corporations each of which having been created for the purposes, charged with the duties, and vested with the powers of a Tennessee non-profit corporation. The Bylaws and Charter may be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.02 Membership.

(a) Mandatory Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Townhome Lot that qualifies the Owner thereof for membership; membership may not be severed from the ownership of the Townhome Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Townhome Lot.

If you acquire a Townhome Lot you automatically become a member of the Association. Membership is Mandatory!

(b) Easement of Enjoyment –General Common Elements. Every Member will have a right and easement of enjoyment in and to all of the general Common Elements, and an access easement by and through any general Common Elements, which easements will be appurtenant to and will pass with the title to such Member's Townhome Lot. Each Townhome Lot Owner shall also have a right and easement of enjoyment in and to all of the general Common Elements, and an access easement by and through any general Common Element, which easements will be appurtenant to and will pass with the title to such Townhome Lot Owner's Townhome Lot. All such rights and easements are subject to the following restrictions and reservations:

(i) The right of the Declarant, or the Declarant's designee, to cause such Improvements and features to be constructed upon the general Common Elements, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;

(ii) The right of the Association to suspend the Member's right to use the general Common Elements for any period during which any Assessment against such Member's Townhome Lot remains past due and for any period during which such member is in violation of any provision of this Declaration;

(iii) The right of the Declarant, during the Development Period, and the Board thereafter, to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for any purpose;

(iv) The right of the Declarant, during the Development Period, and the Board thereafter to grant easements or licenses over and across the Common Elements;

(v) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Common Elements and, in furtherance thereof, mortgage the Common Elements;

(vi) The right of the Declarant, during the Development Period, and the Board, with the advance written approval of the Declarant during the Development Period, to promulgate Rules and Regulations regarding the use of the general Common Elements and any Improvements thereon; and

(vii) The right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

4.03 Governance. The Boards of Directors of the Association shall be constituted and governed as stated in their respective Bylaws.

4.04 Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board and on all other matters to be voted on by the Members will be calculated as set forth below.

(a) The Owner of each Townhome Lot (as applicable) will have one (1) vote for each Townhome Lot so owned.

(b) In addition to the votes to which Declarant is entitled by reason of *Section 4.04(a)*, for each vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period.

(c) When more than one person or entity owns a portion of the fee simple interest in any Townhome Lot, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Townhome Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Townhome Lot, and in no event will the vote for such Townhome Lot exceed the total votes to which such Townhome Lot is otherwise entitled under this *Section 4.04*.

4.05 Powers. The Association will each have the powers of a Tennessee nonprofit corporation. They will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to them by Applicable Law or this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) Rules and Regulations; Bylaws. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules, regulations and Bylaws which do not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property (including the operation, maintenance and preservation thereof), or the Association. Any Rules and Regulations, and any modifications to existing Rules and Regulations, or the Bylaws proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the functions of the Association.

(c) Records. To keep books and records of the Association's affairs and to make such books and records, together with current copies of the Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) Assessments. To levy and collect assessments, as provided in *Article 7* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Resident, upon any Townhome Lot and into any Improvement thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions. The expense incurred by the Association in connection with the entry upon any Townhome Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Townhome Lot so entered, will be deemed an Individual Assessment against such Townhome Lot, will be secured by a lien upon such Townhome Lot, and will be enforced in the same manner and to the same extent as provided in *Article 7* hereof for Assessments. The Association will have the power and authority from time to time, in their own name and on their own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not demolish any Improvements on any Townhome Lot in enforcing these Restrictions before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Townhome Lot(s) has been obtained. **EACH SUCH OWNER AND RESIDENT WILL RELEASE AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION**

INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 4.05(e)* (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Elements for the purpose of constructing, erecting, operating or maintaining the following:

(i) Parks, parkways or other recreational facilities or structures;

(ii) Roads, streets, sidewalks, signs, streetlights, walks, driveways, trails and paths;

(iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;

(iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

(vi) Any similar Improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by Applicable Law. In addition, until expiration or termination of the Development Period, any grant or conveyance under this *Section 4.05(g)* must be approved in advance and in writing by the Declarant.

(h) Manager. To retain and pay for the services of a person or firm (the "**Manager**"), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair, real and personal property taxes and maintenance for any portion of the Property, Common Elements, private or public recreational facilities,

easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Restrictions or as determined by the Board.

(k) Construction on Common Elements. To construct new Improvements or additions to any property owned, leased, or licensed by the Association subject to the approval of the Board and the Declarant until expiration or termination of the Development Period.

(l) Contracts. To enter into Bulk Rate Contracts in accordance with Section or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Elements or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant.

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions of the Association hereunder must be approved in advance and in writing by the Declarant.

(n) Allocation of Votes. To determine votes when permitted pursuant to *Section 4.04* above.

(o) Membership Privileges. To establish Rules and Regulations governing and limiting the use of the Common Elements and any Improvements thereon.

4.06 Conveyance of Common Elements to the Association. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant, and its assignees, reserves the right, from time to time and at any time, to designate by written and Recorded instrument portions of the Property being held by the Declarant for the benefit of the Association. Upon the Recording of such designation, the portion of the Property identified therein will be considered Common Elements for the purpose of this Declaration. Declarant and its assignees may also assign, transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, for the Property and the general public, or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal property assigned, transferred and/or conveyed by the Declarant to the Association shall be deemed accepted upon Recordation, and without further action by the Association, and shall be considered Common Elements without regard to whether such real or personal property is designated by the Declarant as Common Elements. If requested by the Declarant, the Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written consent by the Association shall in no event be a precondition to acceptance by the Association. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal

property interests. Upon completion of the Common Elements but no later than the end of the Development Period, Declarant shall convey to the Association all land within the Property which is not part of a Townhome Lot.

4.07 Indemnification. To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Charter, Townhome Charter, Bylaws or Townhome Bylaws, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she: (a) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association; or (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

4.08 Insurance. The Board may purchase and cause to be maintained, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against or incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against such liability or otherwise.

4.09 Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in *Section 4.05* hereinabove (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant), the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Townhome Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Townhome Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12-day period), in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the Resident of such Owner's Townhome Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the Resident of such Owner's Townhome Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day,

or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

4.10 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Townhome Lots owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

4.11 Administration and Maintenance of Common Elements. The administration and maintenance of the Common Elements by the Association shall be in accordance with the provisions of Applicable Law and the Restrictions, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Elements or by any title insurance company selected by Declarant to insure title to any portion of the Common Elements.

(a) The Association shall maintain and keep in good condition, order and repair the Common Elements which includes, but need not be limited to:

(i) all perimeter fencing, landscaping and other flora, parks, ponds, structures, and improvements, including any entry features and irrigation systems within the Common Elements, parking areas, bike and pedestrian pathways/trails, if any, and recreation facilities, if any, situated upon the Common Elements;

(ii) all furnishings, equipment and other personal property of the Association;

(ii) all street lighting located within the Property that is not the responsibility of Davidson County or other local governmental entity;

(iv) any landscaping and other flora, buffers, entry features, structures and improvements included within public rights-of-way located within or abutting the Property;

(v) such additional portions of the Lot which are designated as Association responsibility by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

(vi) all ponds, streams, detention ponds, and/or wetlands located within the Property which serve as part of the drainage and storm water retention system for the Property, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith; and

(vii) any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from Declarant to the Association and to be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

(b) The Association shall maintain the facilities and equipment within the Common Elements in continuous operation, except during periods when such facilities and equipment are being maintained or repaired.

(c) The Association may be relieved of all or any portion of their respective maintenance responsibilities herein to the extent that such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable.

(d) Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of Declarant.

(e) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Elements shall be a Common Expense to be allocated among all Townhome Lots as part of the Regular Assessments, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other persons or entities who by law or this Declaration or otherwise are responsible for the maintenance, repair or replacement of a portion of the Common Elements.

4.12 Right of Action by Association. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (a) in the name of or on behalf of any Owner (whether one or more); or (b) pertaining to a Claim, as defined in *Section 13.01* below, relating to the design or construction of Improvements on a Townhome Lot. This *Section 4.12* may not be amended or modified without Declarant's written and acknowledged consent and Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, which must be part of the Recorded amendment instrument.

ARTICLE 5
INSURANCE

5.01 Insurance.

(a) Notwithstanding the foregoing or any other provision of this Declaration, the Association shall maintain casualty, fire and extended coverage insurance for one hundred percent (100%) of the replacement cost of the Townhome Buildings and all other improvements located on the Townhome Property ("Townhome Insurance"), but excluding the replacement of any fixtures, cabinets, appliances, flooring, or other interior finishes inside of the sheetrock and subflooring of the Townhome Lot and an Owner's or their guests' personal property and contents. The Association shall maintain adequate reserves to pay any deductible for such coverage. In the event of an insured loss covered by Townhome Insurance, the deductible shall be apportioned among the Townhome Lot Owners in accordance to the percentage of the total proceeds which benefitted each Townhome Lot. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, their family members, guests, invitees, pets or lessees, then the Board may assess the full amount of such deductible against such Owner(s) which shall be collectable in the same manner as assessments under this Declaration. . Insurance premiums for such policies will be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance. During the Development Period, Declarant reserves the

right to satisfy the insurance obligations of the Association with a master insurance program controlled by Declarant.

(b) Notwithstanding the foregoing, if the insurance policy provides that the deductible will apply to each Townhome Lot separately or to each occurrence, each Owner shall be responsible for paying any deductible pertaining to his or her Townhome Lot. If any Owner fails to pay the deductible when required hereunder, then the Association may pay the deductible and assess the cost to the Owner. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of any Assessment or charge owed to the Association, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

(c) In the event of any insured loss to any portion of a Townhome Building, only the Board or its duly authorized agent may file and adjust Townhome Insurance claims. In doing so, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the Townhome Building to substantially the same condition which such property and improvements existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(d) Any damage to or destruction of the Townhome Building shall be repaired or reconstructed unless at least eighty percent (80%) of the Owners of the damaged Townhome Lot(s) (and during the Appointment Period the Declarant) shall decide within sixty (60) days after the loss not to repair or reconstruct. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Townhome Building shall be repaired or reconstructed.

(e) Any Townhome Insurance proceeds remaining after paying the costs of repair or reconstruction shall be used to pay the deductible or retained by the Association in a capital reserve account for the benefit of the Townhome Property and improvements thereon. If Townhome Insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote or approval of Townhome Lot Owners or the Association's general membership, levy a special Townhome Assessment against affected Townhome Lot Owners in proportion to their benefit (such proportionate benefit to be determined by the Board of Directors in its sole discretion). Such special Townhome Assessments shall be used to cover the costs of repair or reconstruction not covered by the proceeds of Townhome Insurance.

5.02 Owner's Insurance. Each Townhome Lot Owner shall carry fire and casualty insurance covering all aspects of the Townhome Lot, improvements thereon and contents thereof, which are not covered by the Townhome Insurance, which shall include the replacement of any fixtures, cabinets, appliances, flooring, or finishes within the interior of the townhouse located on the Townhome Lot, and that Townhome Lot Owner's or their guests' personal property and contents. In addition, each Townhome Lot Owner shall be responsible for obtaining his own insurance insuring said Owner personally from liability in connection with the ownership, possession, use, and occupancy of his Townhome Lot. In addition, each Townhome Lot Owner shall carry liability insurance covering the Owner's Townhome Lot for all damage or injury, including bodily injury, death, and property damage, arising from any condition or occurrence on the Owner's Townhome Lot. Such insurance shall not be the responsibility of the Association, and by acceptance of a deed to a Townhome Lot, each Townhome Lot Owner acknowledges that such insurance is and shall be the sole responsibility of said Townhome Lot Owner. Upon request by the Board, a Townhome Lot Owner shall within ten (10) days deliver a copy of the Certificate of Insurance covering such Owner's Townhome Lot to the requesting entity. Each Homebuilder (other than the Declarant) shall, in addition to the other insurance requirements set forth herein, carry liability insurance with coverage limits reasonably satisfactory to Declarant, the Association for all damage or injury, including bodily injury, death

and property damage, arising from the exercise of the Homebuilder construction easement granted by Declarant in Section 12.02 herein. Each Homebuilder shall deliver to the Declarant and the Association a certificate of liability insurance: (i) evidencing that the aforementioned insurance coverage has been obtained; and (ii) naming the Declarant and the Association as additional insureds.

ARE YOU COVERED?

Except with respect to Townhome Lots, the Association will not provide insurance which covers an Owner's Lot. Townhome Lots shall be covered by the Townhome Insurance; however, Townhome Lot Owners will still need coverage for all fixtures, cabinets, appliances, flooring and other finishes within the interior of the townhouse located on that Townhome Lot, as well as for all personal property located on that Townhome Lot.

5.03 Restoration.

(a) In the event of any fire or other casualty to a Townhome Building, the Association will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials substantially similar to those originally used in the structures damaged or destroyed.

(b) In the event of any fire or other casualty, unless otherwise approved by the ACC, the Owner of a Lot will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials substantially similar to those originally used in the structures damaged or destroyed. To the extent that the Lot Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute the same to completion, or if the Lot Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Lot Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Lot Owner is prohibited or delayed by Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, then at the rate of one and one-half percent (1½%) per month) will be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot.

(c) **EACH SUCH TOWNHOME OWNER WILL RELEASE AND HOLD HARMLESS THE ASSOCIATION, AND ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 5.02*, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE**

NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

5.04 Mechanics' and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this *Article 5*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 6
ENFORCING THE RESTRICTIONS

6.01 Remedies. The remedies provided in this Article for breach of the Restrictions are cumulative and not exclusive. In addition to other rights and remedies provided by the Restrictions and by Applicable Law, the Association has the following rights to enforce the Restrictions:

(a) Nuisance. The result of every act or omission that violates any provision of the Restrictions is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

(b) Fine. The Association may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Townhome Lot if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Restrictions. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Restrictions.

(c) Suspension. The Association may suspend the right of Owners and Residents to use Common Elements (except rights of ingress and egress) for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Restrictions. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Restrictions.

(d) Self-Help. The Association has the right to enter a Townhome Lot, or Improvement located thereon to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Restrictions. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Owner of the Townhome Lot as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help.

(e) Suit. Failure to comply with the Restrictions will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

6.02 Board Discretion. The Board may use their sole discretion in determining whether to pursue a violation of the Restrictions, provided the Board does not act in an arbitrary or capricious manner.

In evaluating a particular violation, the Board may determine that under the particular circumstances: (a) if the position of the Association is not sufficiently strong to justify taking any or further action; (b) the provision being enforced is or may be construed as inconsistent with Applicable Law; (c) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending resources of the Association; or (d) that enforcement is not in the best interests, based on hardship, expense, or other reasonable criteria.

6.03 No Waiver. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Restrictions. Failure by the Association or by any Owner to enforce a provision of the Restrictions is not a waiver of the right to do so thereafter.

6.04 Recovery of Costs. The costs of curing or abating a violation are the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Restrictions, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Restrictions or the restraint of violations of the Restrictions, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

ARTICLE 7
COVENANT FOR ASSESSMENTS

7.01 Assessments.

(a) Established by the Board. Assessments established by the Board pursuant to the provisions of this *Article 7* will be levied against each Townhome Lot in amounts determined pursuant to *Section 7.07* below. The total amount of Assessments will be determined by the Board pursuant to *Section 7.03*, *7.04*, *7.05* and/or *7.06*.

(b) Personal Obligation; Lien. Each Assessment and Townhome Assessment, together with such interest thereon and costs of collection, including reasonable attorney fees as hereinafter provided, will be the personal obligation of the Owner of the Townhome Lot against which the Assessment or Townhome Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Townhome Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article. Assessments shall not commence with respect to any Townhome Lot until it has been improved with a residence and conveyed to a purchaser for purposes of occupancy.

7.02 Declarant Subsidy. Notwithstanding any other provision of this Declaration to the contrary, Declarant shall cover, at Declarant's sole expense, by payment of a subsidy to the Association any deficiency in the operating budgets of the Association after application of all assessments and other charges have been applied until such time as seventy-five percent (75%) of the Townhome Lots, as applicable, are sold and occupied as a residence.

7.03 Maintenance Fund. The Board will establish maintenance funds into which will be deposited all monies paid to the Association, respectively, and from which disbursements will be made in performing the functions of the Association under this Declaration. Such funds may be used for any purpose authorized by the Restrictions and Applicable Law.

7.04 Regular Assessments. Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Association (the "Regular Assessments") which sets forth: (i) an estimate of the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under the Restrictions, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Restrictions, and (ii) an estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such Regular Assessments will be due and payable to the Association annually on or before the first day of the month at the beginning of the fiscal year, or in such other manner as the Board may designate in its sole and absolute discretion. The Association shall levy on Townhome Lots regular Townhome Assessments (and may levy special Townhome Assessments), in amounts to be determined by the Board for each such Townhome Lot's proportionate share of the expenses incurred by the Association in connection with (a) the Association's obligation to maintain and repair aspects of the Townhome Lots and the improvements thereon as required by this Declaration, (b) the purchase of casualty insurance for the Townhome Lots and Common Elements as required by this Declaration and (c) any other expense incurred by the Association solely in connection with Townhome Lots. Assessments shall be secured by liens on Townhome Lots and enforceable by the Association in the same manner as Regular Assessments. Assessments shall not commence with respect to each Townhome Lot until it has been improved with a residence and conveyed to a purchaser for purposes of occupancy.

7.05 Working Capital Assessment and Amenity Fund.

(a) Working Capital Assessment. Each Owner will pay a one-time working capital assessment (the "**Working Capital Assessment**") to the Association in such amount, if any, as may be determined by the Board from time to time in its sole and absolute discretion, but in any event, shall not be greater than an amount that is equal to twice the annual Assessment per Townhome Lot as determined by the Board for the year in which the respective closing occurs. Such Working Capital Assessment need not be uniform among all Townhome Lots, and the Board is expressly authorized to levy Working Capital Assessments of varying amounts depending on the size, use and general character of the Lots and Townhome Lots then being made subject to such levy. The Association may use the working capital to discharge operating expenses. Assessments shall not commence with respect to each Townhome Lot until it has been improved with a residence and conveyed to a purchaser for purposes of occupancy.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Additionally, the Declarant and an Owner who is a Homebuilder will not be subject to the Working Capital Assessment; however, the Working Capital Assessment will be payable by any Owner who acquires a Townhome Lot from the Declarant or the Homebuilder. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, the determination by the Declarant during the Development Period, and the Board thereafter, regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this *Section 7.04*. The Working Capital Assessment will be in addition to, not in lieu of, any other Assessments levied in accordance with this *Article 7* and will not be considered an advance payment of such Assessments. The Working Capital Assessment hereunder will be due and payable to the Association immediately upon each transfer of title to the Townhome Lot, including upon

transfer of title from one Owner of such Townhome Lot to any subsequent purchaser or transferee thereof. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any Working Capital Assessment attributable to a Townhome Lots by the Recordation of a waiver, which waiver may be temporary or permanent.

(b) Amenity Fund. In conjunction with the acquisition of record title to a Townhome Lot by the purchaser thereof, other than the Declarant or a Homebuilder, a one-time contribution shall be made by or on behalf of the purchaser at the closing of the purchase of the Townhome Lot to the Association in an amount as determined in the Board's discretion, but in any event, shall not be greater than an amount that is equal to twice the annual Assessment per Townhome Lot as determined by the Board for the year in which the respective closing occurs. This amount may be deposited into the Association operating account or a segregated account or fund and shall be used exclusively by the Association to cover any of its obligations with respect to the operating expenses, capital repairs or improvements, any rent and other lease obligations, and any and all other expenses incurred by the Association with respect to the use, maintenance and operation of, and any capital improvements to any amenities located with the Property.

7.06 Special Assessments. In addition to the Regular Assessments provided for above, the Board may levy special assessments (the "**Special Assessment**") whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any Special Assessments will be at the reasonable discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements. Any Special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Elements will be levied against all Owners based on Assessment Lots. Assessments shall not commence with respect to each Townhome Lot until it has been improved with a residence and conveyed to a purchaser for purposes of occupancy.

7.07 Individual Assessments. In addition to any other Assessments, the Board may levy an individual assessment (a "**Individual Assessment**") against an Owner and the Owner's Townhome Lot. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or the Owner's Townhome Lot into compliance with the Declaration; fines for violations of the Restrictions; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Owner's Townhome Lot; common expenses that benefit fewer than all of the Townhome Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot (or Townhome Lot) basis; and "pass through" expenses for services to Townhome Lots provided through the Association and which are paid by each Townhome Lot according to the benefit received.

7.08 Intentionally Omitted.

7.09 Amount of Assessment.

(a) Assessments to be Levied. The Board shall levy Assessments against each "Assessment Lot" (as defined in *Section 7.09(b)* below). Unless otherwise provided in this Declaration, Assessments levied pursuant to *Sections 7.03, Section 7.05* and *Section 7.07* shall be levied uniformly against each Assessment Lot allocated to a Townhome Lot, as the case may be.

(b) Assessment Lot. Each Townhome Lot shall constitute one "Assessment Lot" unless otherwise provided in *Section 7.08(c) and (d)*.

(c) Declarant Exemption. Notwithstanding anything in this Declaration to the contrary, no Assessments shall be levied upon Townhome Lots owned by Declarant.

(d) Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Property or any Townhome Lot from any Assessments levied or charged pursuant to this *Article 7*; or (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Property. Declarant or the Board may also exempt any portion of the Property which is dedicated and accepted by public authority from Assessments.

7.10 Late Charges. If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Individual Assessment against the Townhome Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Townhome Lot; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

7.11 Owner's Personal Obligation; Interest. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Townhome Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Townhome Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one and one half percent (1 1/2%)per month), together with all costs and expenses of collection, including reasonable attorney's fees. Such amounts will be levied as an Individual Assessment against the Townhome Lot owned by such Owner.

7.12 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this Article is, together with late charges as provided in *Section 7.09* and interest as provided in *Section 7.10* hereof and all costs of collection, including reasonable attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 7.01(b)* above, and will bind each Townhome Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Townhome Lot, except only for: (a) tax liens; (b) all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Townhome Lot in question and (c) home equity loans or home equity lines of credit which are secured by a second mortgage lien or second deed of trust lien of record; provided that, in the case of subparagraphs (b) and (c) above, such Mortgage was Recorded before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by

an officer, agent or attorney of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Townhome Lot covered by such lien and a description of the Townhome Lot. Such notice may be signed by one of the officers, agents, or attorneys of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Townhome Lot subject to this Declaration, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Townhome Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 7.10,* the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer, agent, or attorney of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12)-day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by an Owner or Resident to the utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Townhome Lot will not relieve the Owner of such Townhome Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Townhome Lot and on the date of such conveyance Assessments against the Townhome Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Townhome Lot, and such sums will be paid in preference to any other charges against the Townhome Lot other than liens superior to the Assessment lien and charges in favor of the State of Tennessee or a political subdivision thereof for taxes on the Townhome Lot which are due and unpaid. The Owner conveying such Townhome Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the r Townhome Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Townhome Lot to a third party; provided, however, that no transfer fee will be due upon the transfer of a Townhome Lot from Declarant to a third party.

Yes, the Association *can* foreclose on your Townhome Lot!
If you fail to pay assessments when due, you may lose title to your Townhome Lot if the Association forecloses its assessment lien.

7.13 Exempt Property. The following areas will be exempt from the Assessments provided for in this Article:

(a) All area dedicated and accepted by a public authority;

(b) The Common Elements and; and

(c) Any portion of the Property owned by Declarant.

7.14 Fines and Damages Assessment.

(a) Board Assessment. The Board may assess fines against an Owner for violations of the Restrictions which have been committed by an Owner, a Resident, or the Owner or Residents guests, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 7.13* will be considered an Individual Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board, as applicable, may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Elements, or any facilities located by the Owner, Resident, or their guests, agents, or invitees. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Rules and Regulations and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

(b) Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Townhome Lot is, together with interest as provided in *Section 7.10* hereof and all costs of collection, including reasonable attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 7.01(b)* of this Declaration. Unless otherwise provided in this *Section*, the fine and/or damage charge will be considered an Assessment for the purpose of this Article and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 7*.

ARTICLE 8
ARCHITECTURAL CONTROL COMMITTEE

Declarant has a substantial interest in ensuring that Improvements within the Property maintain and enhance Declarant's reputation as a community Declarant and do not impair Declarant's ability to market and sell all or any portion of the Property. Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board as provided in *Section 8.02(a)* below, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association. Notwithstanding any provision in this Declaration to the contrary, Declarant may appoint a single person to exercise the rights of the ACC. Declarant may also create a Townhome ACC to review and approve proposed improvements and changes to the Townhome Lots. Declarant may turn over control of the Townhome ACC to the Association.

8.01 Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Townhome Lot, and no Townhome Lot may be

re-subdivided or consolidated with other Townhome Lots or other property, by anyone other than Declarant without the prior written approval of the ACC, except as expressly provided for in Section 8.02(h) herein.

8.02 Architectural Control Committee.

(a) Composition. The ACC will be composed of not more than three (3) persons (who need not be Members or Owners) appointed as provided below, who will review Improvements proposed to be made by any Owner other than Declarant. Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant may assign its right to appoint all members of the ACC to the Association by Recorded written instrument, and thereafter, the Board will have the right to appoint and remove (with or without cause) all members of the ACC. Any assignment by Declarant of the right to appoint and remove all members of the ACC may be withdrawn until expiration of twenty-four (24) months after the expiration of the Development Period. If Declarant withdraws its assignment of the right to appoint and remove all members of the ACC, then on the date of such withdrawal, Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant's right to appoint all members of the ACC will automatically be assigned to the Association upon the expiration of twenty-four (24) months after the expiration of the Development Period. Declarant, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the ACC. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties will no longer be discharged by the ACC unless the sub-committee exercising such duties and responsibilities is dissolved by Declarant. The right to create, dissolve, and appoint members of such sub-committees will reside exclusively with Declarant until such time as Declarant has assigned its right to appoint members of the ACC to the Association. The ACC will have the right to employ consultants and advisors as it deems necessary or appropriate.

(b) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Townhome Lots, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with *Section 8.02(c)* to the ACC at the offices of Declarant, at such address as may hereafter be designated in writing from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Townhome Lot, until the plans and specifications and the Homebuilder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a Majority of the members of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the ACC or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to the clearing of any Townhome Lot, or the construction of any Improvements. The ACC may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Townhome Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(c) Design Guidelines. Declarant shall have the right, but shall have no obligation to, adopt Design Guidelines and, during the Development Period, will have the power from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines, if any. Upon expiration or termination of the Development Period, the ACC, or any sub-committee thereof created pursuant to *Section 8.02(a)*, will have the power from time to time, to amend, modify, or supplement the Design Guidelines, if any; provided, however, that any amendment to the Design Guidelines made by

a sub-committee will only apply to the Improvements under the jurisdiction of such sub-committee, and during the Development Period, any such amendment, modification or supplement must be approved in advance and in writing by the Declarant. In the event of any conflict between the terms and provisions of the Design Guidelines, if any, and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder; provided, however, that any excess funds held by the ACC will be distributed to the Association at the end of each calendar year. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(d) Actions of the Architectural Control Committee. The ACC may, by resolution unanimously adopted in writing, designate one or more of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the ACC, except the granting of variances. In the absence of such designation, the vote of a Majority of all of the members of the ACC taken at a duly constituted meeting will constitute an act of the ACC.

(e) Failure to Act. In the event that any plans and specifications are submitted to the ACC as provided herein, and the ACC fails either to approve or reject such plans and specifications for a period of sixty (60) days following such submission, rejection of such plans and specifications by the ACC will be presumed. In furtherance, and not in limitation, of the foregoing, any failure of the ACC to act upon a request for a variance will not be deemed a consent to such variance, and the ACC's written approval of all requests for variances will be expressly required.

(f) Variances. The ACC may grant variances, in its sole and absolute discretion, from compliance with any of the provisions of the Design Guidelines, if any, or this Declaration. All variances must be evidenced in writing and must be signed by at least a Majority of the members of the ACC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines, if any, will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the Design Guidelines, if any, for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration or the Design Guidelines, if any.

(g) Duration of Approval. The approval of the ACC of any plans and specifications, and any variances granted by the ACC, will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120)-day period and diligently prosecuted to completion within either: (i) one year after issuance of approval of such plans and specifications; or (ii) such other period thereafter as determined by the ACC, in its sole and absolute discretion, the Owner will be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this *Section 8.02(g)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(h) Notwithstanding the foregoing, a Homebuilder shall not be required to seek ACC approval for Improvements and materials that have previously been approved by the Declarant and/or the ACC. In the event that a Homebuilder desires to construct Improvements which contain material modifications to the previously approved plans, including but not limited to any changes in the kind, shape, color, size, materials, and location of any structure, building, fence, wall, driveway, path, or landscaping, then the Homebuilder must obtain ACC approval. In such event, ACC shall respond to Homebuilder within fourteen (14) days following receipt of such plans from Homebuilder. Any new plans submitted by Homebuilder must be in compliance with the Design Guidelines in existence as of the date of this Declaration and all applicable government, state, or local regulations.

(i) No Waiver of Future Approvals. Except for approvals granted to Homebuilders, the approval of the ACC to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the ACC will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the ACC.

(j) Non-Liability of Committee Members. **NEITHER DECLARANT (EXCEPT AS EXPRESSLY PROVIDED FOR IN CONTRACTS WITH A HOMEBUILDER), THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL COMMITTEE'S DUTIES UNDER THIS DECLARATION.**

ARTICLE 9
TOWNHOME DECLARATION

9.01 Horizontal Property Regime With Private Elements. Declarant intends to and does hereby submit the Townhome Property to the provisions of the Tennessee Horizontal Property Act, Tenn. Code Ann. § 66-27-101 et seq. (the "Act"), for the express purpose of establishing thereon a horizontal property regime with private elements to be known as White Avenue Flats. This horizontal property regime shall benefit Declarant and all future Townhome Lot Owners and occupants thereof, and all future owners, occupants, mortgagees, and any other persons hereinafter acquiring any interest in the Townhome Property, holding such interest subject to certain rights, easements and privileges in, over and upon the Townhome 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 Townhome Property, and are established for the purpose of enhancing the value, desirability and attractiveness of the Townhome Property.

9.02 Townhome Exhibits. Attached to this Declaration are descriptions and depictions of the Townhome Property and the Townhome Lots (Exhibits "A" and "B," and any similar exhibits to any Recorded supplement to this Declaration), the Association Charter (Exhibit "C"), the Bylaws (Exhibit "D"), and the attorney's opinion (Exhibit "E") required by Tenn. Code Ann. § 66-27-103(b) for the creation of a planned unit development containing a horizontal property regime with private elements.

ARTICLE 10
MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Townhome Lots within the Property. The provisions of this Article apply to the Declaration, the Bylaws and the Townhome Bylaws.

10.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Townhome Lot to which its Mortgage relates (thereby becoming an "**Eligible Mortgage Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Townhome Lot on which there is an eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Townhome Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Restrictions relating to such Townhome the Owner or Resident which is not cured within sixty (60) days; or

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

10.02 Examination of Books. The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

10.03 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under Applicable Law will relate only to the individual Townhome Lots and not to any other portion of the Property.

ARTICLE 11
GENERAL PROVISIONS

11.01 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property in perpetuity, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns.

11.02 Eminent Domain. In the event it becomes necessary for any public authority to acquire all or any part of the Common Elements for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Elements are paid to Owners or Townhome Owners, such payments will be allocated on the basis of Assessment Lots and paid jointly to the Owners and the holders of Mortgages or deeds of trust on the respective Townhome Lot.

11.03 Amendment. This Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by: (a) Declarant acting alone; or (b) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast by members of the Association. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period.

11.04 Roadway and Utility Easements. Declarant reserves the right to create, locate, relocate, construct, erect, and maintain or cause to be created, located, relocated, constructed, erected, and maintained in and on any portion of the Property then owned by Declarant or any streets maintained by the Association, or areas conveyed to the Association, or areas reserved or held as Common Elements, roadways, sewer lines, water lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground with the right of access to the same at any time for the purposes of repair and maintenance.

11.05 Enforcement. The Association and the Declarant will have the right to enforce, by a proceeding at law or in equity, the Restrictions. Failure to enforce any right, provision, covenant, or condition set forth in the Restrictions will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

11.06 Higher Authority. The terms and provisions of this Declaration are subordinate to Applicable Law. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with Applicable Law.

11.07 Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Declaration, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

11.08 Conflicts. If there is any conflict between the provisions of this Declaration, the Charter, Townhome Charter, Bylaws, Townhome Bylaws, or any Rules and Regulations adopted pursuant to the terms of such documents, the provisions of this Declaration, Charter, Bylaws, Townhome Charter, Townhome Bylaws and the Rules and Regulations, in such order, will govern.

11.09 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

11.10 Acceptance by Owners. Each Owner of a Townhome Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each Owner agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Property, and will bind any person having at any time any interest or estate in the Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

11.11 Damage and Destruction.

(a) Damage. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Elements covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 11.11(a)*, means

repairing or restoring the Common Elements to substantially the same condition as existed prior to the fire or other casualty.

(b) Repair Obligations. Any damage to or destruction of the Common Elements will be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) Restoration. In the event that it should be determined by the Board that the damage or destruction of the Common Element (as the case may be) will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Element will be restored to its natural state and maintained as an undeveloped portion of the Common Element by the Association in a neat and attractive condition.

(d) Special Assessment. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Elements, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 7*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Elements, such payments will be allocated based on Assessment Lots and paid jointly to the Owners and the holders of Mortgages or deeds of trust on their Lots and/or Townhome Lots.

11.12 No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Elements or any part thereof will be permitted, nor will any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the portion of the Property, and/or Common Elements in question has been removed from the provisions of this Declaration pursuant to *Section 12.04* below. This *Section 10.12* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration.

11.13 Notices. Any notice permitted or required to be given to any person by this Declaration will be in writing and may be delivered either personally or by mail, or as otherwise required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

11.14 View Impairment. Neither Declarant, nor the Association guarantees or represents that any view over and across the Townhome Lots, or any open space, or Common Elements within the Property will be preserved without impairment. Neither the Declarant, the ACC, nor the Association shall have any obligation to relocate, prune, or thin trees or other landscaping. The Association with respect to the Common Elements, will have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

11.15 Safety and Security. Each Owner and Resident of a Townhome Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property, or Common Elements. The Association may, but shall not be obligated to, maintain or support certain activities within the Property, or Common Element designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, or Common Element, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

11.16 Notice Concerning Mineral Reservation. Each Owner is hereby informed that Declarant has conveyed to an affiliated entity all right, title and interest, if any, of Declarant in all minerals, resources, and groundwater, including but not limited to oil, gas and hydrocarbons, in, on or under, and/or that may be produced from, the Property. The conveyance instrument ("**Mineral Deed**") includes a provision whereby the owner of the minerals, resources and groundwater, if any, conveyed by such Mineral Deed will not be permitted to use the surface of the Property (to a depth of thirty feet below the finished grade of the Property) for the purpose of exploring for, developing or producing such minerals, resources and groundwater on and after the date of the first conveyance of a completed residence on the Property (the "**Surface Waiver**"). This Surface Waiver applies only to the interest, if any, in the minerals, resources and groundwater conveyed by the Mineral Deed. (The minerals, resources and groundwater, or some portion thereof or some interest therein, may have been conveyed or reserved by third parties prior to Declarant's conveyance to its affiliate, and any such portion or interest would not be affected by the Surface Waiver contained in the Mineral Deed. No representation or warranty, express or implied, is made as to the ownership of the minerals, resources and groundwater or any portion thereof or any interest therein. Further, no representation or warranty, express or implied, is made with respect to whether the owner(s), if any, of any interest in or portion of the minerals, resources and groundwater not conveyed by the Mineral Deed has/have waived their rights to use the surface of the Property or the terms of any such waiver of surface rights.) The Surface Waiver in the Mineral Deed does not prevent the owner of the minerals, resources, and groundwater conveyed by the Mineral Deed from exploring, developing, drilling, producing, withdrawing, capturing, pumping, extracting, mining or transporting the minerals, resources, and groundwater by pooling, unitization, directional drilling or any other manner or method that does not require entry upon the surface of the Property. Each Owner should carefully review the title commitment delivered in connection with its acquisition of a Townhome Lot to determine the full extent to which the Mineral Deed and any other mineral conveyances affect the Townhome Lots and the Property. In addition, if the Declaration includes a prohibition against mineral, resource, and/or groundwater extraction, drilling, or mining, such provision is not binding on the owner(s) of the minerals, resources and groundwater.

ARTICLE 12
EASEMENTS

12.01 Right of Ingress and Egress. Declarant, its agents, employees and designees will have a right of ingress and egress over and the right of access to the Common Elements to the extent necessary to use the Common Elements and the right to such other temporary uses of the Common Elements as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property.

12.02 Reserved Easements. All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and will be construed as

being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Property. Declarant hereby grants and conveys to any Homebuilder an easement for ingress and egress generally across the Property reasonably required to allow completion, repair and maintenance of any and all utility areas or improvements upon any Townhome Lots owned by Homebuilder. In addition, Declarant hereby grants and conveys to any Homebuilder a temporary construction easement, 5 feet in width along the side yard boundary lines of any Lot for the purpose of facilitating home construction on an adjacent Lot owned by such Homebuilder (the "Builder Construction Easement"), which temporary construction easement shall automatically terminate upon the issuance of a certificate of occupancy for the residence constructed on the adjacent Lot by Homebuilder. Homebuilder shall indemnify, defend, and hold harmless the Declarant, the Association, and the Owner upon whose Lot the Builder Construction Easement is located from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) that may result from Homebuilder's use of the Builder Construction Easement.

12.03 Utility Easements. Declarant hereby establishes and reserves unto itself and Declarant's successors and assigns: (a) a perpetual non-exclusive easement over and across each open space, landscape or recreational lot within the Property for public and private utilities necessary or required to serve the Property or the Townhome Lots; (b) a non-exclusive utility easement over and across each Townhome Lot to the extent necessary or required to provide utility service to each Townhome Lot; provided, however, that such easement will not unreasonably interfere with the use of any Townhome Lot for residential purposes; and (c) an easement on the exterior elevation of each residence (including necessary penetrations into the residence) for the purpose of installation, operation, maintenance, and repair of meters, panels, lines and related facilities or appurtenances necessary or required to utilities to each Townhome Lot and the residences located therein. In addition, Declarant, during the Development Period, and the Board thereafter, may grant further easements over and across the Townhome Lots, residences, Common Elements to the extents necessary or required to provide utilities to the residences and/or Townhome Lots; provided, however, that such easements do not unreasonably interfere with the use of any residence for residential purposes. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property, including the residences and Townhome Lots, for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, electronic communications and internet, master or cable television and security. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in (a) through (c) of this *Section 11.03*.

12.04 Subdivision Entry and Fencing Easement. Declarant reserves for itself, the Association, an easement over and across the Property for the installation, maintenance, repair or replacement of certain subdivision entry facilities, walls, and/or fencing which serves the Property. Declarant will have the right, from time to time, to Record a written notice which identifies the subdivision entry facilities fencing to which the easement reserved hereunder applies. Declarant may designate all or any portion of the subdivision entry facilities, walls, and/or fencing as Common Elements by Recorded written notice. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Townhome Lot or residence or Improvement constructed thereon.

12.05 Landscape and Monument Sign Easement. Declarant hereby reserves for itself, the Association, an easement over and across the Property and the Common Elements for the installation, maintenance, repair or replacement of signs, landscaping, and/or monument signs which serve the Property,

and/or Common Elements and any other property owned by the Declarant. Declarant will have the right, from time to time, to Record a written notice, which identifies those portions of the Property, the Common Elements to which the easement reserved hereunder applies. Declarant designates the easement areas reserved hereunder as Common Elements. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Townhome Lot or residence or Improvement constructed thereon.

12.06 Townhome Maintenance Easement. The Association shall have a permanent access easement onto, over, across, through and under the Townhome Lots for the purpose of performing its repair and maintenance obligations on the Townhome Lots or improvements as required under this Declaration.

12.07 Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Townhome Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Townhome Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Townhome Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party. The aforesaid power shall be vested in Declarant, its successors and assigns, for a period of ten (10) years after expiration of the Development Period. Declarant hereby reserves for itself, its successors and assigns the right to execute on behalf of each Owner, Mortgagee, and third party claiming a legal or equitable interest in the Common Elements, any such agreements, documents, amendments or supplements to the Restrictions which may be required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Elements or by any title insurance company selected by Declarant to insure title to any portion of the Common Elements.

ARTICLE 13
DEVELOPMENT RIGHTS

13.01 Development by Declarant. It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to create and/or designate Property, Townhome Lots, Common Elements, Limited Common Elements, and to subdivide with respect to any of the Property pursuant to the terms of this *Section 13.01*, subject to any limitations imposed on portions of the Property by any applicable Plat. These rights may be exercised with respect to any portions of the Property. As each area is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area.

13.02 Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant and any Homebuilder will have the right and privilege: (a) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Townhome Lots in the Property; (b) to maintain Improvements upon Townhome Lots as sales, model, management, business and construction offices; and (c) to maintain and

locate construction trailers and construction tools and equipment within the Property. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 13.02* until twenty-four (24) months after expiration or termination of the Development Period.

13.03 Addition of Land. Declarant may, at any time and from time to time during the Development Period, add additional lands to the Property, and, if applicable, designate any portion of that additional land to be Townhome Property to be added to the Planned Unit Development. Upon the filing of a notice of addition of land, such land will be considered part of the Property (and, if applicable, the Townhome Property) subject to the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Property (and, if applicable, the Townhome Property), Declarant will be required only to Record a supplemental declaration annexing such additional land containing the following provisions:

(a) A reference to this Declaration, which reference will state the document number or volume and initial page number wherein this Declaration is Recorded;

(b) A statement that such land will be considered Property (and, if applicable, the Townhome Property) for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added land; and

(c) A legal description of the added land.

13.04 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association any portion of the Property. Upon any such withdrawal and removal this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

(a) A reference to this Declaration, which reference will state the document number or volume and initial page number wherein this Declaration is Recorded;

(b) A statement that the provisions of this Declaration will no longer apply to the withdrawn land; and

(c) A legal description of the withdrawn land.

13.05 Assignment of Declarant's Rights. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, and properly Recorded, assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

ARTICLE 14
NON-LIABILITY OF DECLARANT; LITIGATION

14.01 Non-liability of Declarant. The Declarant is the developer of the Property with respect to the residential project contemplated herein. However, Declarant may sell all or portions of the Property to other parties for purposes of constructing individual residences to be located on the Lots and/or Townhome Lots. Consequently, all Owners acknowledge and affirm that the Declarant shall not be liable for any claims or causes of action of any kind whatsoever in law or in equity arising from or in any way relating to the construction of improvements upon the Lots and/or Townhome Lots that was performed by parties other than Declarant, its agents, employees, subsidiaries or other affiliated entities.

To the extent that a claim(s) may be asserted against the Declarant or its affiliates by the Association or by Owners with respect to the design, construction, sale, maintenance, habitability or, condition of any Townhome Lots, the Common Elements within the Property, said claim(s) shall be resolved by a final and binding arbitration hearing conducted in Nashville, Tennessee by a panel of no more than three (3) arbiters with a company actively involved in the dispute resolution business and mutually agreeable to all parties, but if no agreement can be reached, then the hearing will be conducted by a company chosen by the Declarant. The Association are hereby authorized to act as the exclusive representative of all Owners in asserting any such claims and causes of action relating to the Common Elements within the Property. Each Owner does hereby appoint the Association to exclusively act as its power of attorney (which power shall be irrevocable) with respect to the above-referenced claims and causes of action including the right to compromise and settle the same. No Owner shall assert a claim or cause of action relating to the Common Elements except through the Association. Any arbitration award may be confirmed and enforced in any court of competent jurisdiction, and the legal principles of res judicata and collateral estoppel shall be applicable to any arbitration award. Any attempt by any such person or entity to enforce this arbitration provision shall constitute conclusive evidence of its intent to be bound hereby. Any portion of this provision that may be held to be unenforceable shall be severable from the balance of this provision so that the remainder of this provision shall remain in full force and effect. Notwithstanding anything to the contrary, the limitations, appointments, and remedies contained in this section 14.01 shall not apply to a Homebuilder, or in any manner limit the rights, obligations and remedies contained in any agreement between a Homebuilder and Declarant.

14.02 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of its respective membership. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments or Townhome Assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against them. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

[Remainder of page intentionally left blank; signatures follow.]

EXECUTED to be effective on the date this instrument is Recorded.

DECLARANT:

SNYDWOOD, GP, a Tennessee general partnership

By: _____

Printed Name: WILLIAM F. SNYDER

Title: AUTHORIZED MEMBER

STATE OF TN §

COUNTY OF Bedford §

Before me, the undersigned, a Notary Public in and for State and County aforesaid, personally appeared William F Snyder, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Authorized member of SNYDWOOD, GP, a Tennessee general partnership, the within named bargainor, and that he, as Authorized member of the limited liability company, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Company by himself as Authorized member.

WITNESS my hand and official seal at Nashville, TN., this 12th day of December 2019.

_____
Notary Public
My commission expires: 4-13-21

AMANDA PERRYMAN
STATE OF TENNESSEE NOTARY PUBLIC
BEDFORD COUNTY

INDEX OF EXHIBITS

Exhibit "A"	Legal Description for Property
Exhibit "B"	Site Plan for Townhome Property
Exhibit "C"	Charter of White Avenue Flats Homeowners Association, Inc.
Exhibit "D"	Bylaws of White Avenue Flats Homeowners Association, Inc.
Exhibit "E"	Attorney's Legal Opinion Letter

EXHIBIT A
LEGAL DESCRIPTION FOR PROPERTY

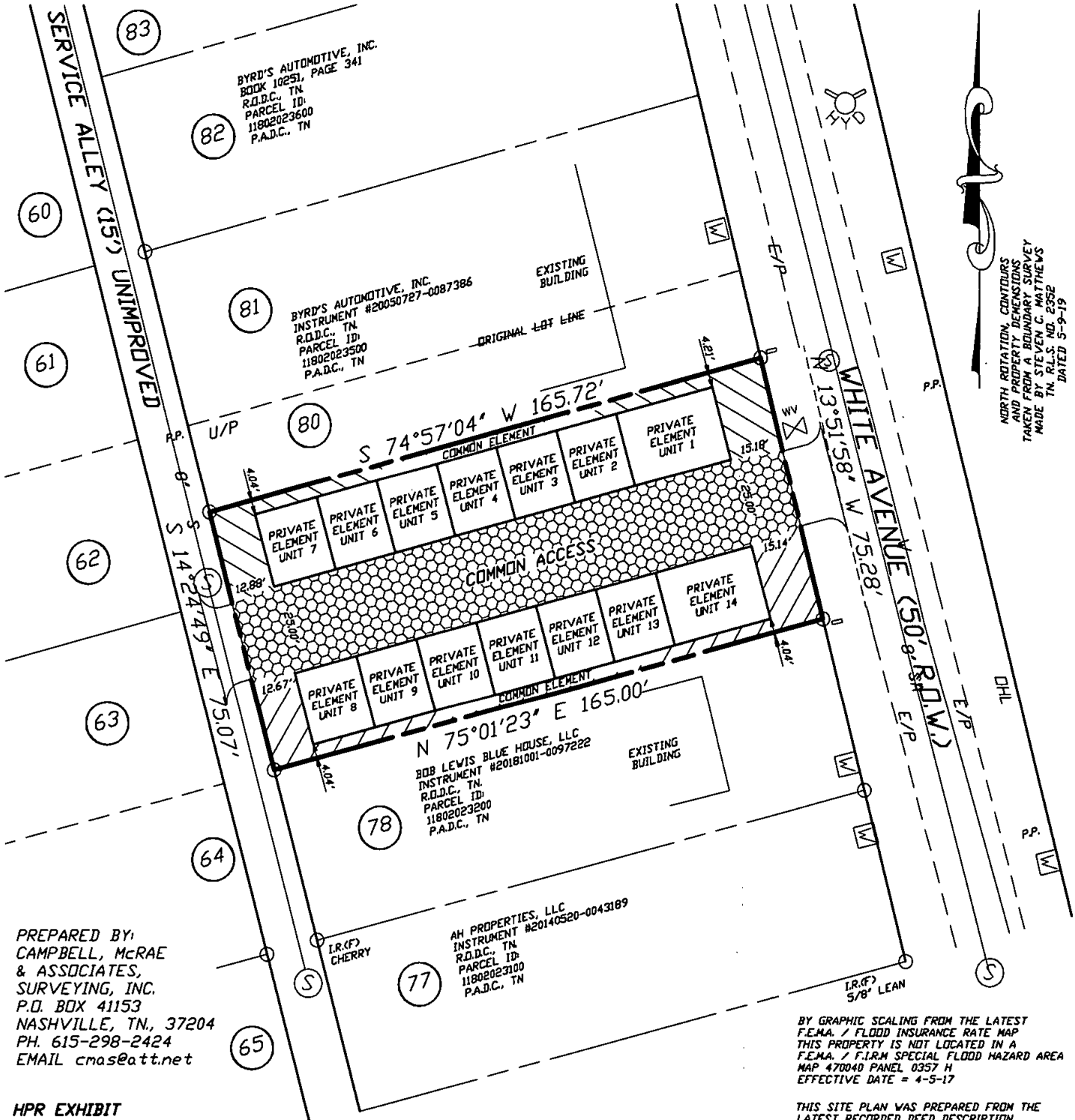
LAND being located in Davidson County, Tennessee, being Lot No. 79 and a Southerly half of Lot No. 80 on the plan of George I. Waddeys Westwood Subdivision, of record in Book 332, page 99, Register' s Office for Davidson County, Tennessee, to which reference is hereby made for a more complete and accurate description.

SAID Lot No. 79 and southerly half of Lot No. 80 adjoin and front together 75 feet on the westerly side of Sixth Avenue South (now White Avenue) and extends back between parallel lines 165 feet to an alley in the rear, measuring 75 feet thereon.

Being the Same property conveyed to SNYDWOOD, GP, a Tennessee general partnership, by deed from Kenneth J. Woodard, of record in Instrument No. 20190731-0075628, Register's Office for Davidson County, Tennessee; as corrected as Scrivener's Affidavit of record in Instrument No. 20191215-0129564, Register's Office for Davidson County, Tennessee.

EXHIBIT B
SITE PLAN FOR TOWNHOME PROPERTY

TO BE ATTACHED



NORTH ROTATION, CONTOURS AND PROPERTY DIMENSIONS TAKEN FROM A BOUNDARY SURVEY MADE BY STEVEN C. MATTHEWS TN. R.L.S. NO. 2352 DATED 5-9-19

PREPARED BY:
CAMPBELL, McRAE
& ASSOCIATES,
SURVEYING, INC.
P.O. BOX 41153
NASHVILLE, TN., 37204
PH. 615-298-2424
EMAIL cmas@att.net

HPR EXHIBIT
LOT 79 AND A SOUTHERLY HALF OF LOT 80 GEORGE L. WADDEY'S SUBDIVISION OF WESTWOOD BOOK 332, PAGE 99 R.O.D.C., TN.
PROPERTY LOCATED IN THE 17TH COUNCIL DISTRICT OF NASHVILLE, DAVIDSON COUNTY TENNESSEE ON THE WESTERLY MARGIN OF WHITE AVENUE, SOUTH OF INVERNESS AVENUE
PROPERTY ADDRESS:
2513 WHITE AVENUE,
NASHVILLE, TN., 37204
DEED REFERENCE:
INSTRUMENT # 20130108-0002535
R.O.D.C., TN.
ORIGINAL PARCEL ID(S):
11802023300 & 11802023400 P.A.D.C., TN
DATE: 08-06-2019
SCALE: 1"= 40'
PREPARED FOR: BUCK SNYDER

JOHN ALAN HOOD
REGISTERED LAND SURVEYOR
TENNESSEE
AGRICULTURE
COMMERCE
TENNESSEE NO. 1838

BY GRAPHIC SCALING FROM THE LATEST F.E.M.A. / FLOOD INSURANCE RATE MAP THIS PROPERTY IS NOT LOCATED IN A F.E.M.A. / F.I.R.M SPECIAL FLOOD HAZARD AREA MAP 470040 PANEL 0357 H EFFECTIVE DATE = 4-5-17

THIS SITE PLAN WAS PREPARED FROM THE LATEST RECORDED DEED DESCRIPTION. THIS SURVEY IS SUBJECT TO THE FINDINGS OF A CURRENT TITLE EXAMINATION. NO TITLE REPORT WAS FURNISHED.

UTILITIES SHOWN WERE TAKEN FROM PUBLIC AS-BUILT RECORDS & FIELD LOCATION. THERE MAY BE UTILITIES OR EASEMENTS PRESENT THAT ARE NOT SHOWN ON THIS SURVEY. CONTACT THE TENNESSEE ONE CALL SYSTEM PRIOR TO ANY CONSTRUCTION OR DIGGING.

THIS EXHIBIT WAS DONE UNDER THE AUTHORITY OF TCA 62-18-126 AND IS NOT A GENERAL PROPERTY SURVEY AS DEFINED UNDER RULE 0820-3-.07. CHAPTER 0820-3 STANDARDS OF PRACTICE, RULES OF THE TENNESSEE BOARD OF EXAMINERS FOR LAND SURVEYORS. THIS EXHIBIT CONTAINS ALL INFORMATION REQUIRED BY TCA SECTION 66-27-309.

JOHN ALAN HOOD TN. R.L.S.#1838

40' 0 40' 80'
GRAPHIC SCALE
(IN FEET)
1"= 40'

EXHIBIT C
CHARTER OF THE ASSOCIATION

[SEE ATTACHED]

Tre Hargett
Secretary of State

Division of Business Services
Department of State
State of Tennessee
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

WHITE AVENUE FLATS HOMEOWNERS ASSOCIATION, INC.
2610 WESTWOOD DR
NASHVILLE, TN 37204-2710

December 13, 2019

Filing Acknowledgment

Please review the filing information below and notify our office immediately of any discrepancies.

SOS Control # :	**001067116**	Formation Locale:	TENNESSEE
Filing Type:	Nonprofit Corporation - Domestic	Date Formed:	12/13/2019
Filing Date:	12/13/2019 3:43 PM	Fiscal Year Close:	12
Status:	Active	Annual Report Due:	04/01/2021
Duration Term:	Perpetual	Image # :	B0780-2060
Public/Mutual Benefit:	Mutual		
Business County:	DAVIDSON COUNTY		

Document Receipt

Receipt # : 005149227	Filing Fee:	$100.00
Payment-Check/MO - ORTALE KELLEY, NASHVILLE, TN		$100.00

Registered Agent Address:
WHITE AVENUE FLATS HOMEOWNERS ASSOCIATION, INC.
2610 WESTWOOD DR
NASHVILLE, TN 37204-2710

Principal Address:
2610 WESTWOOD DR
NASHVILLE, TN 37204-2710

Congratulations on the successful filing of your **Charter** for **WHITE AVENUE FLATS HOMEOWNERS ASSOCIATION, INC.** in the State of Tennessee which is effective on the date shown above. You must also file this document in the office of the Register of Deeds in the county where the entity has its principal office if such principal office is in Tennessee. Please visit the Tennessee Department of Revenue website (www.tn.gov/revenue) to determine your online tax registration requirements. If you need to obtain a Certificate of Existence for this entity, you can request, pay for, and receive it from our website.

You must file an Annual Report with this office on or before the Annual Report Due Date noted above and maintain a Registered Office and Registered Agent. Failure to do so will subject the business to Administrative Dissolution/Revocation.

Tre Hargett
Secretary of State

Processed By: Carol Dickerson

B0780-2060 12/13/2019 3:43 PM Received by Tennessee Secretary of State Tre Hargett

CHARTER

OF

FILED

WHITE AVENUE FLATS HOMEOWNERS ASSOCIATION, INC.

The undersigned natural person, having capacity to contract and acting as the incorporator of a corporation under the Tennessee Nonprofit Corporation Act, adopts the following Charter for such corporation:

1. The name of the corporation is WHITE AVENUE FLATS HOMEOWNERS ASSOCIATION, INC., a Tennessee nonprofit corporation.

2. The name of the initial registered agent of the corporation is WHITE AVENUE FLATS HOMEOWNERS ASSOCIATION, INC, a Tennessee nonprofit corporation.

3. The address of the initial registered office of the corporation 2610 Westwood Dr. Nashville, TN 37204.

4. The address of the principal office of the corporation in the State of Tennessee shall be 2610 Westwood Dr. Nashville, TN 37204.

5. The name and address of the incorporator is Patrick H. Poole, Esq., Ortale Kelley, Law Firm, 330 Commerce Street, Suite 110, Nashville, Tennessee 37201.

6. The corporation is a mutual benefit corporation.

7. The corporation is not for profit.

8. This corporation is organized for the purpose of providing for the ownership, operation, maintenance, preservation, development, and control of all property known as WHITE AVENUE FLATS as established by a Declaration of Covenants, Conditions and Restrictions and Bylaws for the benefit and use of the owners and residents of the Units indicated thereon and in pursuit thereof to:

a. Acquire, by gift, purchase or otherwise, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in accordance with the law and in connection with the purposes of this corporation;

b. Fix, levy, collect and enforce payment by any lawful means of all charges and assessments levied or assessed against members of the corporation and to pay all expenses incident to the conduct of the business of the corporation including all licenses, taxes, or other charges levied against the property of the corporation;

c. Borrow money and mortgage, pledge, or deed in trust any or all of its real or personal property as security for money borrowed for debts incurred;

d. Contract or otherwise provide for necessary or desired maintenance, or improvement, repair, restoration or alteration of its real and personal property, and to purchase, if necessary, equipment, and employ personnel to achieve these purposes;

e. Represent and promote the welfare of the owners and residents of the Units located within WHITE AVENUE FLATS and to have and exercise any and all rights, powers, and privileges which a corporation not for profit organized under the Tennessee General Corporation Act may now or hereafter have or exercise; and

f. Generally engage in any other lawful endeavor or activity in furtherance of the foregoing, so long as such endeavor or activity does not prevent the corporation from being, or maintaining its status as, a homeowners association as defined by Section 528(c)(1) of the Internal Revenue Code of 1986 or corresponding section of any future income tax code.

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9. This corporation is to have members. Every person or entity who is a record owner of a fee interest in any Unit located within WHITE AVENUE FLATS shall be a member of the corporation. Nothing herein is intended to include persons or entities holding any interest intended merely as security for the performance of an obligation. Ownership of a Unit shall be the sole qualification for members, and a membership shall not be transferable other than as it is appurtenant to ownership of a Unit. When more than one (1) person holds an interest in a Unit, only one (1) certificate of membership shall issue and the rights and privileges accruing to such membership shall be assigned among the owners as they may agree.

10. To the extent allowed by the laws of the State of Tennessee, no present or future directors of the corporation (or his or her estate, heirs and personal representatives) shall be liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director of the corporation. Any liability of a director shall be further eliminated to the fullest extent allowed by the laws of the State of Tennessee, as may hereafter be adopted or amended.

11. With respect to claims or liabilities arising out of service as a director or officer of the corporation, the corporation shall indemnify and advance expenses to each present and future director and officer to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

12. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its directors, officers, members or other private individuals or persons, except that the corporation shall be authorized and empowered to (a) pay reasonable compensation for goods and services rendered, (b) rebate excess membership dues, fees or assessments, and (c) make payments in furtherance of the purposes set forth herein.

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13. Upon dissolution, after all creditors of the corporation have been paid any excess membership dues, fees or assessments have been rebated, its assets shall be distributed to the then current Unit Owners.

14. This Charter may be amended upon the approval of at least three-fourths (3/4) vote of eligible Unit Owners, however, this Charter may be amended unilaterally: (1) by the incorporator up to the date the last Unit is conveyed to an owner other than Declarant or builders holding title solely for purposes of development and sale; or (2) by the Board of Directors at any time as permitted under Tenn. Code Ann. §§ 48-51-101 *et seq.*

DATED this 13th day of December, 2019.

Patrick H. Poole, Incorporator
Ortale Kelley Law Firm
330 Commerce St. Suite 110
Nashville, Tennessee 37201
Phone: (615) 256-9999
Fax: (615) 726-1494

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EXHIBIT D
BYLAWS OF THE ASSOCIATION

[SEE ATTACHED]

BYLAWS

OF
WHITE AVENUE FLATS HOMEOWNERS ASSOCIATION, INC.

ARTICLE 1: DEFINITIONS

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

ARTICLE 2: OFFICES

2.01. Registered Office. The initial registered office of the corporation shall be at WHITE AVENUE FLATS HOMEOWNERS ASSOCIATION, INC., 2610 Westwood Dr. Nashville, TN 37204, and the name of the registered agent of the corporation is Snydwood, GP.

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

ARTICLE 3: MEMBERS AND MEMBERSHIP PRIVILEGES

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

ARTICLE 4: MEETINGS OF MEMBERS

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

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

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

4.03. Special Meeting. Special meetings of the Members, for any purpose or purposes, may be called by the president, the Board of Directors, or by Members having not less than twenty-five percent (25%) of the total percentage values of those votes entitled to be cast at such meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of such meeting.

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

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

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

4.07. Method of Voting; Proxies. (a) The Owner of each Townhome Lot will have one (1) vote for each Townhome Lot so owned. (b) In addition to the votes to which Declarant is entitled by reason of Section (a) above, for each vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period. (c) When more than one person or entity owns a portion of the fee simple interest in any Townhome Lot, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Townhome Lot will be exercised by the person so designated in

writing to the Secretary of the Association by the Owner of such Townhome Lot, and in no event will the vote for such Townhome Lot exceed the total votes to which such Townhome Lot is otherwise entitled under this Section 4.07. No Member, other than the Developer, shall be entitled to vote at any meeting of the corporation until such Member has presented evidence of ownership of a Townhome Lot in WHTE AVENUE FLATS to the corporation, if such evidence is demanded, the sufficiency of which shall be determined by the members of the Board present at the meeting. The vote of each Member may only be cast by such Member or by a proxy given by such Member to his duly authorized representative bearing a date not more than eleven months prior to such meeting. Such proxy shall be filed with the secretary of the corporation prior to or at the time of the meeting. If title to a Townhome Lot shall be in the name of two or more persons as Co-owners, all of such persons shall be Members of the corporation and are referred to herein as "Joint Co-owners". Any one of such Joint Co-owners may vote at any meeting of the Members of the corporation and such vote shall be binding upon such other Joint Co-owners who are not present at such meeting until written notice to the contrary has been received by the Board of Directors in which case the unanimous vote of all such Joint Co-owners (in person or by proxy) shall be required to cast their vote as Members. If two or more of such Joint Co-owners are present at any meeting, their unanimous action shall also be required to cast their vote as Members of the corporation.

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

ARTICLE 5: DIRECTORS

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

5.02. Number; Qualifications; Election; Term. The initial Board of Directors shall consist of three (3) Directors, each of whom shall be a Member of the Association or a partner or employee of the Developer, or its subsidiaries or affiliates and shall serve terms of two (2) years or until his successor shall be elected and qualify. The Directors shall be appointed by the Developer until eighteen (18) months after Declarant no longer owns any portion of the Property, unless earlier terminated by a Recorded written instrument executed by the Declarant. Directors shall serve without compensation. After transfer of control to the Townhome Lot Owners as provided in the Declaration, there shall be five (5) Directors elected by the Members who shall serve the following terms: the Director receiving the most votes shall serve a term of three (3) years; the two (2) Directors receiving the second most votes and third most votes shall each serve a term of two (2) years; and the remaining two (2) Directors shall each serve a term of one (1) year. After the expiration of the term of each Director elected following initial transfer of control to the Townhome Lot Owners, all Directors shall be elected for terms of two (2) years.

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

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

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

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

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

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

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

except where action of the full Board of Directors is required by statute or the Charter.

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

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

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

5.13 Communication Outside of Meetings. The Board of Directors may communicate with each other in person, by e-mail or other electronic form of communication. If any decision is reached or resolution adopted by the Board outside of a face-to-face meeting of the Board, such decision or resolution shall be reduced to writing and ratified by the Board at the next face-to-face meeting of the Board.

ARTICLE 6: NOTICES

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

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

ARTICLE 7: OFFICERS

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

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

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

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

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

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

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

7.08. Treasurer. The treasurer (or an agent to whom the Board has delegated some or all responsibility of the Treasurer) shall have the custody of the corporate funds and securities, shall

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

ARTICLE 8: MISCELLANEOUS PROVISIONS

8.01. Reserves. The Board of Directors shall create such reserve or reserves as the Directors from time to time, in their discretion, think proper to provide for contingencies, and to repair or maintain any portion of WHITE AVENUE FLATS or for such other purposes as the Directors shall think beneficial to the corporation.

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

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

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

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

of gross negligence or willful misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such Director, officer, or employee may be entitled by law or under bylaw, agreement, vote of Members or otherwise.

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

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

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

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

CERTIFICATION

I hereby certify that the foregoing Bylaws were adopted by White Avenue Flats Homeowners Association, Inc. on the 13th day of December, 2019.

William F. Snyder, President

EXHIBIT E
ATTORNEY'S LEGAL OPINION LETTER

[SEE ATTACHED]

ORTALEKELLEY LAW FIRM

Patrick H. Poole
ppoole@ortalekelley.com
Direct: (615) 780-7513

December 13, 2019

WHITE AVENUE FLATS
HOMEOWNERS ASSOCIATION, INC
Attn: William F. Snyder
2610 Westwood Dr.
Nashville, TN 37204

Re: LEGAL OPINION FOR WHITE AVENUE FLATS, A HORIZONTAL PROPERTY REGIME PLANNED UNIT DEVELOPMENT (PUD)

Dear Mr. Snyder:

I am an attorney licensed to practice in the State of Tennessee. Pursuant to Tenn. Code Ann. § 66-27-103(b), this letter shall serve as the requisite attorney's opinion in which I certify that upon the recording of this legal opinion and the following additional documents, all legal requirements for the creation of a Planned Unit Development under the terms of the above-referenced statute will have been met:

1) The Declaration of Covenants, Conditions and Restrictions for White Avenue Flats, a Horizontal Property Regime Planned United Development;

2) Charter of White Avenue Flats Homeowners Association, Inc., a not-for-profit corporation;

3) Bylaws of White Avenue Flats Homeowners Association, Inc., a not-for-profit corporation; and

4) The plat/site plan exhibits for White Avenue Flats, a Horizontal Property Regime Planned United Development, which plat/site plan exhibits show the units, private elements, common elements, and limited common elements.

Should you have any questions, please feel free to contact me.

Very truly yours,

ORTALE KELLEY LAW FIRM

Patrick H. Poole