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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HOMES AT SOUTHGATE & MARTIN

## A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HOMES AT SOUTHGATE & MARTIN**, is made, published, and declared by 603 Southgate, LLC, a Tennessee limited liability company (the "Developer"), and any and all persons, firms, or corporations presently owning or hereafter acquiring any of the within described property.

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

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

**WHEREAS**, Developer intends to and do hereby submit said real estate together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging to, or in any way pertaining thereto, to the provisions of the Tennessee Horizontal Property Act, Tenn. Code Ann. § 66-27-101 et seq., for the express purpose of establishing thereon a horizontal property regime with private elements to be known as Homes at Southgate & Martin; and

**WHEREAS**, Developer further desires to establish said horizontal property regime for its own benefit and for the mutual benefit of all future owners or occupants of the Parcel (as defined below) or any part thereof, and intend that all future owners, occupants, mortgagees, and any other persons hereinafter acquiring any interest in the Parcel, shall hold such interest subject to certain rights, easements and privileges in, over and upon the Parcel 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 Parcel, and are established for the purpose of enhancing the value, desirability and attractiveness of the Parcel.

**WHEREAS**, it is to the benefit, interest, and advantage of Developer and of each and every person or other entity hereafter acquiring any of the within described Parcel that certain covenants, conditions, restrictions, assessments, and liens governing and regulating the use and occupancy of such property be established, fixed, and set forth and declared to be covenants running with the land; and

**WHEREAS**, Developer, now desires to supersede any restrictions that may presently exist with respect to the Parcel described herein, including without limitation that certain Declaration of Covenants, Conditions and Restrictions for The Homes at 601 Southgate Avenue recorded as Instrument Number 20210512-0064242 with the Register's Office for Davidson County, Tennessee (and any amendments thereto), and to establish restrictions applicable to such Parcel in accordance with the terms of this Declaration.

**NOW, THEREFORE**, in consideration of the premises, Developer, with any and all persons, firms, corporations, or other entities hereafter acquiring all or any of the Parcel, that any previous restrictions, recorded or unrecorded shall be of no further force or effect and that the Parcel shall be hereinafter subjected to the following restrictions, covenants, conditions, assessments, and liens (collectively, the "Restrictions") relating to the use and occupancy thereof and relating to the use, occupancy, and maintenance of such portions of the same as at present or in the future shall be designated as common areas, said Restrictions to be construed as covenants running with the land which shall be binding on all parties having or acquiring any right, title, or interest in or to the Parcel or any part thereof and which shall inure to the benefit of each owner thereof.

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

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

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

**(b) "Additional Property"** means all real property which may be subject to annexation to the terms of this Declaration in accordance with the provisions hereof.

**(c) "Association"** means Homes at Southgate & Martin Owners Association, Inc.

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

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

**(f) "Bylaws"** means the Bylaws of the Association. For purposes of the Act, all provisions contained in this Declaration dealing with the administration and maintenance of the Parcel shall be deemed to be a part of the Bylaws.

**(g) "Common Elements"** means all real and personal property within the Parcel other than the Units which is now or hereafter owned by the Association. The Common Elements are designated on Exhibit A-1 (and on a similar exhibit to any Supplementary Declaration hereto) and shall be held by the Association for the common use and enjoyment of the Owners. The Common Elements shall include but shall not be limited to lawns (other than

those within Private Elements), streets, roadways, bridges, culverts, parking areas, drainage structures and facilities, private sanitary sewers, ponds, waterways, fences, sidewalks, curbs, gutters, signs, lights, utilities and other improvements. Developer shall convey title to the Common Elements to the Association.

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

**(i)** **"Developer"** means 603 Southgate, LLC, a Tennessee limited liability company, its successors and assigns, provided such successors or assigns are designated in writing by Developer as a successor or assign of the rights of Developer set forth herein (such designated successor or assign being a "Successor Developer").

**(i)** **"Governing Documents"** means collectively, this Declaration, the corporate charter and corporate bylaws of the Association and any Rules and Regulations adopted by the Board.

**(j)** **"Homes at Southgate & Martin"** refers to that certain residential real estate development located in Davidson County, Tennessee known as Homes at Southgate & Martin located on the Parcel.

**(k)** **"Limited Common Elements"** means any Common Elements contiguous to and serving a single Unit or a certain number of Units to the exclusion of other Units, as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful Occupants of such Unit or Units either in this Declaration, on Exhibit A-1 or by a similar exhibit to a Supplementary Declaration hereto.

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

**(m)** **"Member"** means a member of the Association.

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

**(o)** **"Owner"** means the person(s) or entity(ies) whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit. Unless specifically provided otherwise herein, Developer shall be deemed an Owner so long it holds title to any Unit.

**(p)** **"Parcel"** means the parcel or tract of real estate described on **Exhibit "A"** and depicted on **Exhibit "A-1"** attached to this Declaration, the Additional Property as herein defined, and all improvements and structures thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, submitted to the provisions of the Act.

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

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

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

**(t)** **"Supplementary Declaration"** means an instrument filed with the Register's Office of Davidson County, Tennessee which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

**(u)** **"Unit"** means a portion of the Parcel as shown and designated in Exhibit A-1 (or on an exhibit to any Supplementary Declaration) for separate ownership and shall include the Private Elements and the residence and improvements now and hereafter located thereon. The Units are identified by number on Exhibit A-1 and may be held and conveyed by reference to such number. Conveyance of a Unit shall automatically convey the undivided membership of each Owner in the Association. Any Unit may be jointly or commonly owned in any estate recognized under applicable law.

**2. Submission of Parcel to the Act.**

**(a)** Developer, by recording this Declaration, does hereby submit and subject the Parcel to the provisions of the Act and hereby establish a horizontal property regime with private elements as authorized and described in the Act and to be hereafter known as Homes at Southgate & Martin.

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

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

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

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

**(f) Association Rights**. The Association may not assert as a reason to object to the new development plan the fact that existing Association facilities will be additionally burdened by the Additional Property to be added by the new development. Developer reserves the right to modify any preliminary plan to reconfigure any Units, create additional amenities areas or create additional Common Elements, in an additional phase or otherwise, without the consent of any Owner.

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

**(h) Withdrawal of Property Only by Developer.** Developer may de-annex all or any portion of the Parcel from the terms and conditions of this Declaration.

**(i) Continued Use of Common Elements.** No addition shall revoke or diminish the rights of the Owners to the utilization of the Common Elements as established hereunder, except to grant to the owners of the land being added to the Parcel the right to use the Common Elements according to the terms and conditions as established hereunder, and the right to vote and be assessed as hereinafter provided.

**(j) Merger.** Upon a merger or consolidation of the Association with another non-profit corporation, its property (whether real or personal or mixed) may, by operation of law, be transferred to the surviving or consolidated corporation or, alternatively, the property of the other non-profit corporation may, by operation of law, be added to the property of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated corporation shall thereafter operate as the Association under this Declaration and administer the covenants and restrictions established by this Declaration upon the Parcel. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration.

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

**4. Units**. The legal description of each Unit shall consist of the identifying number of such Unit as shown on Exhibit A-1 (and on any similar exhibit to a Supplementary

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

**5. Owners Association; Administration and Operation of the Parcel.**

**(a)** Developer shall form the Association, which shall be the governing body for Homes at Southgate & Martin and shall be operated to provide for the maintenance, repair, replacement, administration, operation and care of the Parcel as provided in the Act, this Declaration and the Bylaws. Each Owner shall be a member of the Association, with each Unit holding an undivided membership interest in the Association which shall be appurtenant to such Unit, each such membership interest appurtenant to a Unit being in an equal share, subject to the provisions concerning voting hereinafter set forth. The Board shall be elected and shall serve in accordance with the provisions of the Bylaws. The fiscal year of the Association shall be determined by the Board and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the use and benefit of Owners in accordance with the provisions of the Act, this Declaration and the Bylaws. An Owner's membership shall automatically terminate when such owner ceases to be an Owner. Upon the conveyance or transfer of an Owner's ownership interest to a new Owner, the new Owner shall automatically succeed to the former Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be divided among the respective Owners with one (1) vote granted to each Unit (except that Developer shall have five (5) votes per Unit).

**(b) Voting Membership.**

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

**Class B**. THE CLASS B MEMBER SHALL BE DEVELOPER, WHICH IS ENTITLED TO FIVE (5) VOTES FOR EACH UNIT OWNED UNTIL THE LATER OF (A) THE DATE WHEN ONE-HUNDRED PERCENT (100%) OF THE UNITS SUBJECTED TO THIS INSTRUMENT OR BY ANY SUPPLEMENTARY DECLARATION ARE NOT OWNED BY DEVELOPER, (B) TEN (10) YEARS FROM THE LATER OF THE DATE HEREOF OR THE DATE OF THE LAST SUCH SUPPLEMENTARY DECLARATION, OR (C) WHEN, IN ITS DISCRETION, DEVELOPER SO DETERMINES.

**(c) Management of Parcel**. The Board shall have the authority to engage the services of an agent (herein sometimes referred to as the "Managing Agent") to maintain, repair,

replace, administer and operate the Parcel, or any part thereof, to the extent deemed advisable by the Board, subject to the provisions of subsection (d) below. The Board shall require that such Managing Agent have fidelity bond coverage on its employees handling Association funds. The cost of such services shall be a common expense, as defined below.

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

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

**(f) Non-Liability of Developer, Board, Directors and Officers**. The Developer, the Association, the Board, and the officers, directors and agents of such entities shall not be personally liable to any Owner for any mistake of judgment or for any other acts or omissions of any nature whatsoever, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Owners shall collectively indemnify and hold harmless Developer, the Association, the Board, and the officers, directors and agents of such entities, and their respective heirs, executors, administrators, successors and assigns in accordance with the Charter of the Association and Bylaws.

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

**6. Developer Determination Binding**. In the event of any dispute or disagreement between any Owners relating to the Parcel, or any questions of interpretation or application of the provisions of this Declaration or the Bylaws, the determination thereof by the Developer (or the Board after termination of all Class B Memberships) shall be final and binding on each and all such Owners.

**7. Ownership of Interests in the Association.** Subject to the provisions concerning voting rights hereinabove contained, each Unit shall be allocated an equal percentage ownership in the Association. The percentages of ownership interests shall remain constant unless hereafter changed by recorded amendment to this Declaration consented to in writing by the Owners, in accordance with the requirements hereinafter contained. Said ownership interest shall be an undivided interest, and the undivided membership interests in the Association shall be owned by the Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in

the Association corresponding to said Unit. The undivided percentage of ownership in the Association corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the title to that Unit.

**8. Use of the Common Elements**. Except as hereinafter set forth, each Owner shall have the right to use the Common Elements in common with all other Owners, and shall have easements for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Owner. Such right to use the Common Elements shall extend to each Owner, and such Owner's agents, servants, tenants, family members, customers, invitees and licensees. However, each Owner shall have the right to the exclusive use and possession of the Private Elements attributable to the Unit. Such rights to use the Common Elements, shall be subject to and governed by the provisions of the Act, the Governing Documents and the following:

**(a)** the right of the Association to lease, grant concessions or grant easements with respect to parts of the Common Elements (subject to the provisions of the Governing Documents), all income derived by the Association from leases, concessions or other sources to be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

**(b)** the right of the Association to limit the use of the Common Elements to Owners or Occupants of Units, their families and their guests;

**(c)** the right of the Association to suspend voting privileges and rights of use of the Common Elements for any Owner whose assessment against his Unit becomes delinquent or who is otherwise in violation of the provisions of this Declaration, the By-laws or the rules and regulations of the Association;

**(d)** the right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Members; provided that no such dedication or transfer shall be effective unless the Members entitled to cast at least three-fourths (3/4) of the votes agree to such dedication or transfer and signify their agreement by a signed and recorded written document; and provided further that this Section shall not preclude the Board from granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage, utilities, and drainage facilities upon, over, under, and across the Common Elements without the assent of the membership when such easements are requisite for the convenient use and enjoyment of the Parcel or are otherwise in the best interests of the Association; and

**(e)** so long as Developer owns any portion of the Parcel or any property subject to annexation into Homes at Southgate & Martin, the right of Developer to:

**(i)** require the Association to swap Common Elements if necessary to cure any setback or other building regulation violation; and

**(ii)** redesignate any portion of the Common Elements as developable Units (or portions of Units), or require the Association to convey Common Elements to Developer for such redesignation;

shall not be diminished, so long as such transfer or redesignation is done in accordance with all applicable governmental requirements and the total amount of Common Elements within Homes at Southgate & Martin is not diminished.

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

**10. Common Expenses.**

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

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

**(ii)** the cost of maintenance, repair and replacement of the Common Elements and those portions of the Units and Private Elements which the Association is required to maintain under Section 14 of this Declaration.

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

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

**(c) Levy of Assessments**. The Board shall fix the commencement date for monthly or annual assessments ("Assessments") on the first day of the month following the conveyance of the first Unit to an Owner and shall provide for a partial Assessment between the commencement date and the end of the calendar year next following. Thereafter, monthly or annual Assessments shall be levied by the Board, by action taken on or before December 1 of each year for the ensuing year. The Board, in its discretion, may provide for the periodic payment of such Assessments at some intervals other than monthly. The Board, in its sole and reasonable discretion, may also levy supplemental assessments during any assessment year if required to defray unanticipated expenses or increased costs which occur during said assessment year.

Special Assessments may be levied in any year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements or such other portion of the Parcel for which the Association is obligated to maintain and repair, if any, including fixtures and personal property related thereto; provided that the same are first approved by the Board, recommended to the membership, and not objected to by Members entitled to cast at least two-thirds (2/3) of the total of votes of the Association within thirty (30) days of the Board's written notice of the special assessment to the Members. Written notice of the monthly, annual or special Assessment shall be mailed (by U.S. first class mail, email or such other reasonable means of communication approved by the Board) to every Owner subject thereto.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Unit have been paid and the amount of any delinquencies. The Association shall not be required to obtain a request for such a certificate signed by the Owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting the same.

**(d) Other Charges and Fees**. In addition to assessments, the Association may charge the following fees in such amounts as the Board shall establish and modify from time to time:

(i) upon the purchase or other conveyance of a Unit, a transfer fee payable by the new Owner at the time of closing or the date of conveyance whichever is earlier;

(ii) upon the purchase or other conveyance of a Unit, a working capital fee payable by the new Owner at the time of closing or the date of conveyance whichever is earlier

(iii) a fee for determining the amount of unpaid assessments and other charges owed with respect to any Unit, payable by the requesting party in advance;

(iv) a collection fee to the Owner of a Unit if the Association seeks assistance from another person, entity or attorney with the collection of unpaid assessments, fines or other charges owed to the Association with respect to said Unit;

(v) a late fee to the Owner of a Unit if any assessment, fine or other charge owed to the Association is not timely paid;

(vi) an annual fee for each leased Unit payable by the Owner of said Unit(s), said lease

administration fees being for the purpose of defraying costs and expenses incurred by the Association in connection with leased Units and the collection of information about the occupants of leased Units; and

(vii) a fee for providing an estoppel certificate payable by the requesting party in advance; and

(viii) a fee for providing such other goods or services as the Board may determine from time to time.

If the Association enters into a management contract which requires the Association to pay any of the fees listed above to the property manager, the Association, at its option, may require the Owner of the Unit or other responsible party to pay the fee directly to the management company.

The Board may levy fines, fees and other charges as permitted by the provisions of the Governing Documents.

Developer is exempt from all fines, fees or other charges described in this Section.

**(e) Annual Assessment**. The amount of the annual Assessment shall be established by the Board from time to time. In addition, both initial Unit purchasers and purchasers upon resale shall pay a working capital charge in an amount to be determined by the Board from time to time. The purchaser of such Unit shall commence monthly payments of one-twelfth (1/12) the annual Assessment in the third full month following closing. The Association at its option may allow the payment of the annual Assessment on a monthly or quarterly basis.

If unanticipated or increased expenses during any fiscal year require funds in excess of the Association's annual budget for that year, the Board may increase the annual Assessment to cover the budget deficit. Such increase shall become effective thirty (30) days after the Association sends written notice to each Owner of the amount and reason for the increase.

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

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

**(h) Mortgage and Deed of Trust Protection.** The lien for Common Expenses payable by an Owner shall be subordinate to the lien of a recorded mortgage or deed of trust on

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

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

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

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

In the event of damage to or destruction of any Building, Unit or Common Elements as a result of fire or other casualty which is covered by proceeds of a Association insurance policy, the Board shall, in its sole discretion and without intervention of any Owner or deed of trust

holder, arrange for the prompt repair and restoration of the damaged portions of the Units, Buildings and Common Elements substantially in accordance with the original plans and specifications therefor. Where the insurance indemnity is insufficient to cover the cost of such repairs and restoration, the deficit shall be paid by all Owners directly affected by the damage, in proportion to each Unit's percentage of ownership in the Association. The Board shall not be responsible for the repair, replacement or restoration of any wall, ceiling or floor decorations or covering, or furniture, furnishings, fixtures, appliances or equipment installed in the Unit by an Owner or Occupant unless insurance therefor is specifically provided for in the insurance policy obtained by the Board.

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

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

The Board shall also have authority to and shall obtain such insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring each member of the Board, officers of the Association, and members of any Association committee, from liability arising from the fact that said person is or was director or officer of the Association, or a member of such a committee.

Each Owner shall be responsible for obtaining insurance on the contents of their own Unit, as well as additions and improvements thereto, decorations, furnishings and personal property therein, and personal property stored elsewhere on the Parcel. In addition, in the event an Owner desires to insure against such Owner's personal liability and loss or damage by fire or other hazards above and beyond the extent that such Owner's liability, loss or damage is covered

by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Board for all of the Owners as part of the Common Expenses, as above provided, said Owner may, at such Owners option and expense, obtain additional insurance. To the extent that insurance coverage purchased by an individual Owner is coextensive with insurance coverage purchased by the Association, the Association's insurance policy shall be primary.

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

**(a) Obligations of Owners**. Each Owner, at such Owner's expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within the interior of such Owner's Unit, including plumbing, pipes, wiring, ducts, conduits, appliances, and structural components of the Unit. In addition, each Owner shall be responsible for (i) all exterior glass, windows, including storm windows, screens, and doors, including storm doors, and all portions of the Unit for which the Association is not responsible; and (ii) all plumbing, pipes, wiring, ducts, conduits and appliances which are outside the boundaries of the Unit but which exclusively serve the Unit. In the event that an Owner fails to satisfy their maintenance obligations as herein defined, the Association may, after approval by the Board, enter onto said Unit and perform such necessary maintenance, repair or replacement, the cost of such work to be added to and become a part of the Assessment to which said Unit is subject.

**(b) Obligations of Association.** The Association shall be responsible for maintenance of, repairs to and replacements within the Common Elements and the Parcel, including landscaping and yard maintenance. The Association shall be responsible for trash pickup service, exterior landscaping to the extent as installed by the Association, driveways, walkways, porches, decks, patios, painting and non-structural maintenance and repair of roofs, gutters, down-spouts, exterior trim, exterior caulking and other exterior repairs of a non-structural nature, provided that such exterior maintenance responsibilities shall not include glass, windows, including storm windows, screens and doors, including storm doors, which shall be the responsibility of the Owner. Other items of maintenance, repair, and replacement in a Unit shall be the responsibility of the Owner. The cost of maintenance of, repairs to and replacements, which are the responsibility of the Association, shall be part of the Common Expenses, subject to the terms of this Declaration, the Bylaws, rules and regulations of the Association.

Developer and the Association shall have permanent access easement onto, over, across, through and under the Units for the purpose of performing their respective repair and maintenance obligations or for any other purposes required or permitted under the Governing Documents.

An Owner's maintenance, repair and replacement obligations which change the exterior appearance of the Unit are subject to approval by the Association's Architectural Control Committee.

If an Owner defaults in their maintenance obligations under this Section, or if an Owner, an occupant of their Unit, business invitee or guest damages any Common Element, a portion of a Unit for which the Association is responsible, or a Unit owned by another Owner, the Association may levy fines against the Owner until the default is cured or the damage is repaired, or the Association may cure the default or repair the damage and charge the Owner with the cost of the work.

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

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

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

The following provisions shall apply to all party walls constructed in the Parcel: (i) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use; (ii) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. If other Owners make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; subject, however, to the right of any Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions; (iii) The Owner may construct or reconstruct a party wall subject to and within the limitations of architectural control and other limitations of this Declaration with the right to go upon the adjoining Unit to the extent reasonably necessary to perform the construction. The construction shall be done expeditiously. Upon completion of the construction, the Owner shall restore, as is reasonably practicable, the adjoining Unit to as near the same condition which prevailed on or before the commencement of the construction; (iv) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to the Owner's successors in title; (v) If any Owner desires to sell his Unit, he may, in order to assure a prospective purchaser that no adjoining Owner(s) has a right of contribution as provided in this Article, request that the

adjoining Owner(s) provide a certification that no right of contribution exists. It shall be the duty of each adjoining Owner to make a certification as to whether there is any pending claim of contribution immediately upon request and without charge.

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

**(a) Architectural Control.** No structure may be erected, placed or altered on any Private Elements, and no building permit may be obtained, until the construction plans and building specifications and a plan showing: (i) the location of improvements on the Private Elements; (ii) the grade elevation (including rear, front and side elevations); (iii) the type of exterior material and roof material (including delivery of samples thereof); (iv) the color of paint or stain to be applied to any exterior surfaces and the color of the roof material (including delivery of samples thereof); and (v) the location and size of any wood deck or patio (which shall be broom finish concrete, unless otherwise approved by Developer), shall have been approved in writing by the Developer or the Association's Architectural Control Committee (the "ACC"). Members of the ACC shall be appointed by Developer until such time as Developer does not own any Unit or other property within Homes at Southgate & Martin. Thereafter, members of the ACC shall be appointed by the Board. The Board may itself constitute the ACC.

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

Applications by architectural changes shall be deemed denied if not responded to by the ACC within sixty (60) days of receipt.

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

**17. Encroachments and Easements.**

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

**(b) Utilities Easements**. Developer hereby establishes and reserves unto itself, Developer their successors and assigns: (a) a perpetual non-exclusive easement over and across Common Area within the Parcel for public and private utilities necessary or required to serve the Parcel or the Units; (b) a non-exclusive utility easement over, across and under each Unit to the extent necessary or required to provide utility service to each Unit or to any portion of the Parcel; provided, however, that such easement will not unreasonably interfere with the use of any Unit 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 Unit and the residences located therein. In addition, Developer,while the Class B membership exists and thereafter the Board may grant further easements over and across the Units and Common Areas to the extent necessary or required to provide utilities to the residences and/or Units; 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 Parcel, is granted an easement over the Parcel, including the residences and Units, 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 Parcel. 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. Neither Developer nor any utility company using the easements shall be liable for any damage done by either of them or their successors or assigns, or by their agents, employees or servants to shrubbery, trees, flowers or improvements of the Owner located on the land within or affected by said easements. A right of pedestrian access by way of a driveway or open lawn area shall also be granted on each Unit, from the front Unit line to the rear Unit line to any utility company having an installation in the easement. The easement area of each Unit and all improvements in it shall be maintained continuously by the Owner of the Unit, except for those improvements for which a public authority or public utility company is responsible. Fences shall not be allowed to be constructed over or along any easement for public utilities.

**(c) Construction and Sales Easement.** Developer hereby, declares, grants and reserves for the benefit of Developer and its affiliates, together with the right to grant, assign, and transfer the same to their respective sales agents and/or sales representatives, (a) an easement for construction activities anywhere on the Parcel, and (b) an easement for sales, marketing and promotional activities, including, without limitation, the installation and maintenance of signs on the Parcel and for the construction and maintenance on the Parcel from time to time of a sales and administrative center in which and from which Developer, its affiliates and its authorized sales agents and sales representatives may engage in marketing, sales and promotional activities and related or supportive administrative activities of a commercial nature.

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

Owners. Such consent shall set forth a maximum price, which the Board or its duly authorized agent may bid and pay for said Unit.

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

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

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

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

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

**(a) Approval of Plans.** All improvements or changes to the exterior appearance of a Unit or Limited Common Elements including without limitation any construction, reconstruction, remodeling, alteration, or addition of or to any structure, building, fence, wall or improvement of any nature shall require the prior written approval of the ACC as to the location, plans, and specifications therefor. As a prerequisite to consideration for approval and prior to the commencement of the contemplated work, two (2) complete sets of building plans and specifications shall be submitted. The ACC shall be the sole arbiter of such plans and may withhold its approval for any reasons, including purely aesthetic reasons. It is expressly

acknowledged that construction undertaken by Developer shall be conclusively deemed to comply with the foregoing, it being declared that construction of Unit(s) by Developer shall be exempt from ACC review and from any limitations on construction existing under this Declaration or the Association's Bylaws. Upon giving approval, construction shall be started and prosecuted to completion promptly and in strict conformity with such plans.

At such time as Developer divests itself of all Units within the development, the right of approval of plans for further construction, reconstruction, remodeling, alterations, and additions shall rest exclusively in the Association and the ACC, the members of which the Board shall then have the authority to appoint.

Developer, the Association, the ACC and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. In the event that the ACC fails to indicate its approval or disapproval within sixty (60) days after the receipt of the required documents, the application shall be deemed denied. Approval or disapproval by the ACC shall not be deemed to constitute any warranty or representation by it including, without limitation, any warranty or representation as to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations. Anything contained in this section, or elsewhere in this Declaration to the contrary notwithstanding, Developer and the Association are hereby authorized and empowered, at their sole and absolute discretion, to make and permit reasonable modifications or deviations from any of the requirements of this Declaration relating to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Unit and of the size and location of such building or improvement when, in their sole and final judgment, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Parcel and the improvements as a whole; provided, however, such modifications and deviations must comply with all applicable ordinances and regulations established by the City of Nashville, Davidson County, Tennessee.

The ACC may require the submission to it of such documents and items, including but without limitation, written requests for and description of the variances requested, plans, specifications, plot plans and samples of material(s), as the ACC shall deem appropriate, in connection with its consideration of a request for a variance. If the ACC approves a request for a variance, it shall evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the Owner of the Unit(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing its decision to permit the variance describing (when applicable) the conditions on which the variance has been approved (including as examples, but without limitation, the type of alternate materials to be permitted) and signed by the ACC. Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (i) written notice of disapproval from the ACC or (ii) failure by the ACC to respond to the request for variance within sixty (60) days of said request. In the event the ACC or any successor to the authority thereof shall not then be functioning, no variances from the covenants herein contained shall be permitted, it being the intention of Developer that no variances be available except at its discretion or that of the ACC. The ACC shall not have the authority to approve any variance except as expressly provided in this Declaration.

**(b) Structural Compliance.** All structures shall be built and maintained in substantial compliance with all applicable building Codes, and with the plans and specifications therefor, as approved by Developer or the Association as provided herein.

**(c) Improvements and Setback Restrictions.** No building or structure, or any part thereof, shall be located on any Unit so that the improvements exceed the boundaries of the Unit. Except as approved by Developer, no encroachment upon any utility easement reserved on Exhibit A-1 or other recorded instrument shall be authorized or permitted.

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

**(e) Walls, Fences and Hedges.** Prior to the construction of any wall, fence or hedge, the Developer or Association (as the case may be) must approve in writing plans submitted by the owner in accordance with the procedures set forth for approval of improvements in this Declaration. Such plans shall include details of location, style and construction materials for the proposed wall, fence or hedge. As a general rule, fences must extend from the back corners of the townhouse to the rear property line of the Unit or Limited Common Elements appurtenant thereto, although the ACC, in its sole discretion, may also approve encroachments of fences over Common Elements. White vinyl privacy fences and black wrought iron design fences shall be permitted subject to ACC approval. Maintenance and repair of any fence shall be the responsibility of the Owner on whose property or Limited Common Elements the fence is located. The ACC may also promulgate design guidelines (the "Design Guidelines") consistent with this Declaration which shall govern the types, colors, dimensions and locations of walls, fences and hedges permitted on Units.

**(f) Roofing Material.** The roof of any building (including any garage) shall be constructed or covered with roofing material originally installed and/or approved by Developer, or after initial construction, by the ACC.

**(g) Parking.** Residents' vehicles shall be parked in the driveway serving such Unit; provided, however, that residents may park a vehicle in a Common Element parking space or on the street if necessary to accommodate more vehicles than the driveway will allow. Common Element parking spaces are primarily for visitor use, although residents' vehicles may be parked there when a resident's driveway is full. Neither residents nor visitors may park, store or leave semi-tractors, tractor-trailers, buses, storage pods, trailers of any nature or any other large vehicle anywhere within the Properties except for such periods of time as are reasonably necessary for loading and unloading, providing delivery or household moving service(s) or as needed for construction or reconstruction work within the Properties. The Board may adopt and impose additional rules and regulations not inconsistent with this Declaration pertaining to the parking or

storage of vehicles, boats and equipment within the Properties, on-street parking, the maintenance and use of parking spaces located on the Common Elements, and the uses, operation and control of motor vehicles, boats, and equipment of any kind within the Properties.

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

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

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

The Association shall contract with a private trash collection provider which shall be the exclusive provider of trash collection services for all Units. Unit Owners are prohibited from contracting with or using a different trash collection service from the provider with which the Association contracts with. The cost of the Association's trash collection contract shall be a Common Expense.

**(k) Clothes Lines.** Hanging clothes, rugs, blankets, towels or other household items outside on clothes lines or otherwise is strictly prohibited.

**(l) Signs and Advertisements**. No sign, advertisement, billboard or advertising structure of any kind shall be erected upon or displayed or otherwise exposed to view on any Unit or any improvement thereon; provided that this requirement shall not preclude the installation by Developer of signs identifying the entire residential development and provided further that this requirement shall not preclude the placement by Owners of "For Sale" signs in the front of individual residences of such size, character, and number as shall from time to time be approved by the ACC. Owners may display "For Rent" or "For Lease" signs, not larger than 24" x 24", only on the inside of front windows of their dwelling. The Board shall have the right to remove any such unapproved sign, advertisement, billboard or structure that is placed on said Units, and in doing so shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal; provided, however, a resident may temporarily erect a political sign which complies with Tenn. Code Ann. § 2-7-143 and any rules and regulations adopted by the Association with respect to such signs.

**(m) Use of Temporary Structures.** No structure of a temporary character, mobile home, camper, trailer, tent, shack, barn or other outbuilding shall be erected or moved onto any Unit or the Common Elements. No structure of any kind except a dwelling house may be occupied as a residence, and the outside of any building so occupied must be completed before occupancy, including landscaping. The developer may use temporary structures as building or



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sales offices and for related purposes so long as Developer owns any property within Homes at Southgate & Martin.

**(n) Storage of Boats, Trailers and Other Vehicles.** No inoperative vehicles or recreational vehicles (including, but not limited to, campers, trailers, boats, boat trailers and travel trailers) may be stored on or in any Common or Private Elements. No tractor trailers, buses, or other large commercial vehicles may be parked in parking areas or in streets within the Parcel. The foregoing shall not apply to construction vehicles of Developer. Overnight parking of any vehicle, trailer or other wheeled instrument or equipment on any street within the Parcel shall not be permitted.

**(o) Outside Lighting.** Outside lights at eaves and door entrances shall be permitted, but no exterior flashing or high-intensity lights, floodlights, or spotlights on the exterior of any building shall be permitted, except with the prior written approval of the ACC. Outside lighting may only be directed downward, toward the Unit to which it is attached or toward Limited Common Elements appurtenant to the Unit. Exterior Lighting may not be directed toward another Unit or the Limited Common Elements appurtenant to another Unit.

**(p) Satellite Dishes and Antennae.** Unless otherwise approved by Developers or the ACC, all television antennae, satellite dishes, dishes which receive video programming services via multipoint distribution services and any other device used for the reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution (wireless cable) services must be one (1) meter or less in diameter, must be located to the rear of a Unit and not visible from the street (unless such location would preclude reception of an acceptable quality signal) and may not be affixed to any portion of the Common Elements except Limited Common Elements appurtenant to the Unit.

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

**(r) Recreational Equipment.** All playground and recreational equipment must be used, placed, or maintained to the rear of all Units.

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

**(t) Maintaining Unit Appearance.** An Owner shall maintain their Unit and any Limited Common Elements appurtenant thereto in a neat and attractive condition. No Unit shall be used for storage of material and equipment, except for normal residential requirements or incident to construction of improvements thereon as herein permitted. The accumulation of garbage, trash or rubbish of any kind and the burning of any such materials is prohibited. In the event of default on the part of the Owner or Occupant of any Unit in an Owner's maintenance

obligations, such default continuing after ten (10) days' written notice to said Owner, the Association may, subject to Board approval, enter upon said Unit, repair, maintain and restore the same, and remove or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions and to place said Unit in a neat, attractive, healthful and sanitary condition. In so doing, the Association shall not be subject to any liability for trespass or otherwise. All costs incurred in any such repair, maintenance, restoration or removal shall be charged against the Owner of such Unit as the personal obligation or such Owner and as a lien upon the Unit, enforceable and collectible in the same manner and to the same extent as a maintenance assessment. Any Occupant of such Unit shall be jointly and severally liable with the Owner for the payment of such costs.

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

**(v) Use of Premises; Leasing**. Each Unit shown on Exhibit A-1 shall be used only for private, single-family residential purposes and not otherwise; provided, however, that Units may be leased for terms of any duration and short-term leasing through online platforms such as Airbnb.com, VRBO.com and otherwise is expressly permitted. A Unit Owner who leases a Unit shall obtain and keep current any permit required by state or local government in order to lease and/or short-term lease their Unit.

Notwithstanding the foregoing, as long as Developer owns any portion of the Parcel, Developer may maintain such facilities as it deems necessary or convenient, including, but without limitation, offices, storage areas, model Units and signs, and Developer may use residential structures or accessory buildings for sales offices and display purposes. It is expressly declared that Developer shall be permitted to construct, maintain and operate one or more model Units.

The Board may adopt reasonable rules and regulations consistent with the terms of this Section 19(v) relating to leases and to the implementation of the provisions of this Section. The Association may also adopt a lease registration program which may require, among other things, an Owner to pay an annual fee to the Association for each leased Unit to defray the cost to the Association of maintaining up to date contact information for occupants of leased Units.

**(w) Animals and Pets**. No animals, livestock, or poultry of any kind (including without limitation no potbellied pigs or snakes) shall be raised, bred, pastured, or maintained in any Unit or on any Common Element, except for up to a total of two (2) dogs and/or cats. No animals may be kept for any commercial use or purpose. Pets are to be leashed at all times when they are not within the Owner's Private Elements. Pet owners shall clean up and properly dispose of waste left by their pet. If, at any time, the Board determines that a pet has become a nuisance as a result of violating any provision of the Governing Documents, making excessive or recurrent noise, causing damage to real or personal property within Homes at Southgate & Martin, causing injury to any person or other animal, or otherwise, the Association is entitled to an

injunction from the Chancery Court for Davidson County, Tennessee, requiring the pet-owner to remove the offending pet from Homes at Southgate & Martin. The Association shall be entitled to recover all costs it incurs as a result of any enforcement proceeding commenced under this section (including reasonable attorney's fees) from the owner of the offending pet, the Occupant of the Unit where the pet resides or was visiting and/or the Owner of the Unit where the pet resides or was visiting.

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

**(y) Hobbies and Activities**. The pursuit of any inherently dangerous activity or hobby, including, without limitation, the assembly and disassembly of motor vehicles or other mechanical devices, the shooting of firearms, fireworks, or pyrotechnic devices of any type or size, and other such activities is strictly prohibited on any Unit or Private Element or upon the Common Elements without the express written consent of the Association.

**(z) Visual Obstruction at the Intersection of Public Streets.** No object or thing which obstructs sight lines at elevations between two (2) feet and six (6) feet above the surface of the streets shall be placed, planted or permitted to remain on any corner Parcel within the triangular area formed by the curb lines of the streets involved and a line running from curb line to curb line at points twenty-five (25) feet from the junction of the street curb lines. The same limitations shall apply on any Unit within ten (10) feet from the intersection of a street property line and the edge of a driveway.

**(aa) Roads.** In addition to ACC approval required hereunder, all Owners shall consult with the Chief Engineer of the Tennessee Highway Department or the Traffic and Parking Commission of the local governmental body with jurisdiction over the Properties, or their equivalent before any driveways, culverts, other structures or grading are constructed within the limits of any dedicated roadway, and such placement or construction shall be done in accordance with the requirements of the said agencies applying to such roads in order that the roads or streets within the subdivision which would be affected by such placement or construction may not be disqualified for acceptance into the public road system by Davidson County, Tennessee or any other local governmental body having jurisdiction over roads within Homes at Southgate & Martin.

**(bb) Easement for Roads**. The right is expressly reserved to the Developer, its representatives, heirs, successors and assigns, to construct all streets, roads, alleys, or other public ways as now, or hereafter may be, shown on the Plat(s), at such grades or elevation as they, in their sole discretion, may deem proper; and, for the purpose of constructing such streets, roads, alleys or

public ways, they additionally, shall have an easement, not exceeding (10) feet in width, upon and along each adjoining Parcel, for the construction of proper bank slopes in accordance with the specifications of the government body or agency having jurisdiction over the construction of public roads. No Owner shall have any right of action or claim for damages against anyone on account of the grade of elevation at which such road, street, alley or public way may hereafter be constructed, or on account of the bank slopes constructed within the limits of the said ten (10) foot easement.

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

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

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board the right, in addition

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

Violations of any provision this Declaration, the Bylaws, Rules, Regulations or written policy or guideline applicable to the Parcel (collectively the "Governing Documents") authorize the Board to take all or any of the following actions: (1) First Notice. Upon learning of a violation of the Governing Documents, the Board (or its agent) may send a written notice describing the violation and allowing a period of no less than five (5) days within which to cure the violation. The length of the cure period shall be determined by the Board in its sole and reasonable discretion depending on the nature and severity of the violation; (2) Second Notice. If the violation is not corrected within the time stated in the first notice, the Board may send a second written notice and assess a fine of up to $250.00 per violation (depending upon the nature and severity of the violation) payable within thirty (30) days; (3) Third Notice. If the violation remains uncorrected and/or the fine is unpaid thirty days after the second notice of violation, the Board may send a second written notice and assess a fine of up to $500.00 per violation payable within thirty (30) days; (4) When fines for any violation exceed $1,000.00, or if fines remain unpaid thirty (30) days after a third notice of violation, the Board shall add all costs of enforcement (including reasonable attorney's fees) to the total owed.

Owners are responsible and may be fined for violations committed by themselves, their family members, pets, tenants, occupants and visitors to the Unit. The Board may also levy fines and take other enforcement action against tenants or other occupants of a Unit.

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

Notwithstanding the foregoing, no judicial or administrative proceeding shall be commenced or prosecuted by the Association, nor shall any legal services be provided with respect to preparing for such judicial or administrative proceedings unless approved by a vote of (a) 75% of the Class A Members eligible to vote, and (b) the Class B Member (if Class B membership has not been terminated). The Association shall prepare a budget of the total estimated cost of the litigation which shall be submitted to the Members for a vote along with the notice of the proposed litigation. The budget shall be based upon an estimate of the total cost and fees of the litigation made by the attorney being retained by the Association for the litigation. The Association shall assess all Owners whose interests are being sought to be protected through such litigation in accordance with the Assessment process provided herein;

provided, however, that no funds from General Assessments or other sources may be used for such purpose. Prior to preparation for and institution of legal proceedings, any Assessment levied in such regard must be more than 75% collected. This Section shall not apply, however, to (a) actions brought by the Association against parties other than Developer to enforce the provisions of this Declaration (including without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to ad valorem taxation, (d) counterclaims brought by the Association in proceedings instituted against it, or (e) any dispute in which the amount in controversy is $10,000 or less, as adjusted for inflation from year to year. This Section shall not be amended without the written approval of Developer so long as Developer owns any portion of the Parcel.

**21. Amendments.** Except as specifically stated elsewhere herein, and except for this Section 21, any provisions of this Declaration may be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission, approved by Owners owning not less than two-thirds (2/3) of the total Units. No such amendment or modification to this Declaration shall be effective without the prior written consent of Developer so long as its Class B Membership exists.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR THE DECLARATION TO THE CONTRARY, FOR SO LONG AS DEVELOPER OWNS ANY PORTION OF THE PARCEL, DEVELOPER, IN ITS SOLE DISCRETION, SHALL HAVE THE UNILATERAL RIGHT TO MAKE AND RECORD ANY AMENDMENT TO THIS DECLARATION OR THE BYLAWS.

Amendments are effective upon their recordation in the office of the Register of Deeds of Davidson County, Tennessee.

**22. Notices**. Notices provided for in the Act, Declaration or Board shall be in writing, and shall be addressed if to an Owner, to the address of such Owner's Unit, and if to the Association or Board, as the case may be, to the registered office, as set forth in Charter of the Association or to such other address as may be designated by the Association or Board from time to time, or at such other address as may be hereinafter provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Owners. Any Owner may designate a different address for notices by giving written notice to the Association. Notices addressed as above shall be deemed delivered when sent by United States registered or certified mail, when delivered in person with written acknowledgment of the receipt thereof or when sent by any other means permitted under the Bylaws, Tennessee Nonprofit Corporation Act, Tenn. Code Ann. § 48-51-101, *et seq.* or any other applicable law.

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

**23. Severability**. If any provision of the Declaration or Board, or any section, sentence, clause, phrase, word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the Board and of the application of any such

provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration or the Board shall be construed as if such invalid part was never included therein.

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

The acceptance of a deed of conveyance, devise or of a lease to a Unit, the entering into occupancy of any Unit or the use of any portion of the Common Elements shall constitute an agreement that the provisions of this Declaration, the Board and any rules and regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Owner, tenant, Occupant or other person, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

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

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



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

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

**(a)** The right of the Association to suspend the enjoyment rights of any member for any period during which any Assessment remains unpaid, and for such period as it considers appropriate for any infraction of the Governing Documents; and

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

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

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

**28. Rights of Developer.**

**(a) Provisions Inoperative as to Initial Construction; Exemptions for Specified Parties.** Nothing contained in this Declaration will be interpreted, construed or applied to prevent Developer, or its contractors, subcontractors, agents, and employees (collectively, "Specified Parties"), from doing or performing on all or any part of the Parcel owned or controlled by Developer, whatever is determined to be reasonably necessary or convenient to complete the development of Homes at Southgate & Martin, including, but not limited to, (i) the right to erect, construct, and maintain such structures and other improvements as may be reasonably necessary or convenient for the conduct of the Specified Parties' business of completing the development, establishing the Parcel as a residential community and disposing of

the same by sale, lease, or otherwise; and (ii) the right to maintain such signs as may be reasonably necessary or convenient in connection with the development or the sale, lease or other transfer of Units or the sales and marketing activities on the Parcel. Developer is hereby granted easements for ingress, egress, construction and maintenance over, across, under and through all portions of the Parcel to conduct such activities.

**(b) Construction Activities**. All Owners, occupants, and users of Units are hereby placed on notice that Developer, its agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, shall continue, from time to time, to conduct construction activities within the Parcel. By the acceptance of a deed or other conveyance or leasehold, license, or other interest in a Unit, and/or by using any portion of a Unit or the Parcel generally, Owners and all residents and visitors to the Parcel acknowledge, stipulate, and agree: (i) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (ii) not to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise), any property within or in proximity to the Unit or any other portion of the Parcel where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night, a holiday or otherwise during non-working hours); (iii) that Developer, and its agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable for any losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from and/or relating to any breach of this covenant; (iv) that any purchase or use of any portion of a Unit has been and will be made with full knowledge of the foregoing; and (v) this acknowledgment and agreement is a material inducement to Developer to sell, convey, lease, and/or allow the use of Units within the Parcel.

**(c) Disclaimer of Representations or Warranties**. EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY DEVELOPER OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH THE PARCEL, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE COMMUNITY, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF. IF ANY SUCH WARRANTY CANNOT BE DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

**(d) Access and Control.** Developer and the Association may, but shall not be obligated to, maintain or support certain activities within the Parcel designed to make the Parcel more secure than they otherwise might be. **Neither the Association nor Developer shall in any way be considered insurers or guarantors of privacy or safety within the Parcel. Neither the Association nor Developer shall be held liable for any loss or damage by reason of failure to provide adequate safety or privacy, or ineffectiveness of privacy or safety measures undertaken. All Owners and occupants of any Unit, tenants, guests and invitees of any Owner, as applicable, understand, acknowledge and agree that (i) Developer, the Association, and their respective officers, directors and supervisors, are not in any way liable for the function or efficacy of any fire protection system, electronic monitoring**

**system or other privacy system, whether or not approved by Developer or the ACC, and whether or not such systems or equipment was installed according to guidelines established by Developer or the Association, (ii) Developer, the Association, and the officers, directors and supervisors of each of them, do not warrant that any fire protection or electronic monitoring systems or other privacy systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise, and (iii) that fire protection or electronic monitoring systems or other privacy systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner and occupant of any Unit, and each tenant, guest and invitee of an Owner, as applicable, acknowledges and understands that each Owner and occupant of any Unit and each tenant, guest and invitee of any Owner assumes all risks for loss or damage to persons, to Units and to the contents of Homes and further acknowledges that the Association, and Developer have made no representations or warranties nor has any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or electronic monitoring systems or other privacy systems recommended or installed or any privacy measures undertaken within the Parcel.**

**29. Natural Conditions**. The Parcel may contain a number of manmade, natural, and/or environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including, without limitation, insects, venomous and non-venomous snakes, alligators, other reptiles, raccoons, foxes, wild dogs, wild cats, coyotes, birds and other animals, some of which may pose hazards to persons and/or pets coming in contact with them. Each Owner and occupant of any Unit, and every person entering the Parcel: (a) acknowledges and agrees that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movements within and/or through the Parcel; and (b) knowingly and voluntarily assumes all risk of property damage, personal injury and/or death arising from the presence of such plants and wildlife within the Parcel. Neither the Association, Developer nor their respective members, partners, affiliates, officers, directors, shareholders, attorneys, agents, and/or employees, shall have any duty to take action to control, remove, or eradicate any plant or wildlife within the Parcel, nor shall they have any liability for any property damage, personal injury and/or death resulting from the presence, movement, and/or propagation of any plant or animal wildlife within or through the Parcel. The areas described in this Section may also contain ponds, lakes, retention ponds, detention ponds, dry detention areas, intermittent pools of water, muddy areas and/or buffer areas, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant of a Unit shall enter upon, or permit their guests, family members, invitees, agents, tenants, employees, contractors, subcontractors, visitors or any other person acting on that Owner's behalf to enter upon and/or disturb any such areas in any way without the prior written approval of Developer or the Association.

**30. Flood Zones.** Flood zone determinations are made by the Federal Emergency Management Agency. Developer makes no assurance, with regard to any portion of the Parcel, that any flood zone designation for a Unit existing as of a particular date will remain the same. Developer further advises that any such flood designation could be changed due to re-grading of the land as a result of the land development process. Each Owner, by virtue of taking title to a Unit, acknowledges and agrees, and shall be deemed to have acknowledged and agreed, that

Developer has no involvement in the determination or designation of flood zone designations for any portion of the Parcel.

**31. Provisions Relative to Mortgagee's Rights and to Federal Home Loan Mortgage.** If required by written regulations of the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA"), the following provisions shall apply:

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

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

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

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

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

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

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

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

**(e)** An adequate reserve fund for maintenance, repair, and replacement of Common Elements, shall be funded and replenished on a periodic basis by regular monthly payments. If necessary, the Board may also levy a special assessment to increase the reserve fund.

A working capital fund shall be funded by contributions in amounts to be established by

the Board from time to time, to be paid by Unit purchasers upon the initial sale or resale of each Unit, and to be collected and transferred to the Association at the time of closing of each Unit sale and maintained in an account for the use and benefit of the Association.

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

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

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

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

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

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

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

**DEVELOPER**

**603 Southgate, LLC,**
**a Tennessee limited liability company**

By: Magnolia Tree Investments, Inc.
a California corporation

Its: Manager

By: _____
Matt Dickstein, Corporate Secretary

STATE OF CALIFORNIA )
COUNTY OF _____ )

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Matt Dickstein, with whom I am personally acquainted (or who proved to me on the basis of satisfactory evidence), and who upon oath acknowledged that he executed the foregoing instrument for the purposes therein contained and who further acknowledged that he is Corporate Secretary of Magnolia Tree Investments, Inc., a California corporation which is the Manager of 603 Southgate, LLC, a Tennessee limited liability company and the within-named bargainor, and further acknowledged that he is authorized to execute this instrument as Corporate Secretary of Magnolia Tree Investments, Inc. acting as Manager of 603 Southgate, LLC.

Sworn to and subscribed before me this _____ day of _____, 2024.

_____
Notary Public
My commission expires: _____

PLEASE SEE
NOTARY ATTACHMENT

**CALIFORNIA JURAT WITH AFFIANT STATEMENT** **GOVERNMENT CODE § 8202**

☑ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

*Signature of Document Signer No. 1*

*Signature of Document Signer No. 2 (if any)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

Subscribed and sworn to (or affirmed) before me on this 13 (*Date*) day of February (*Month*), 2024 (*Year*),
by (1) Matthew O'Donnell Dickstein
(and (2) _____),
*Name(s) of Signer(s)*

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

SARAH PEGG
COMM. #2390100
NOTARY PUBLIC - CALIFORNIA
ALAMEDA COUNTY
My Comm. Exp. Jan. 10, 2026

Signature _____
*Signature of Notary Public*

*Seal*
*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Declaration of Covenants Document Date: _____
Number of Pages: 31 Signer(s) Other Than Named Above: _____

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# "EXHIBIT A"

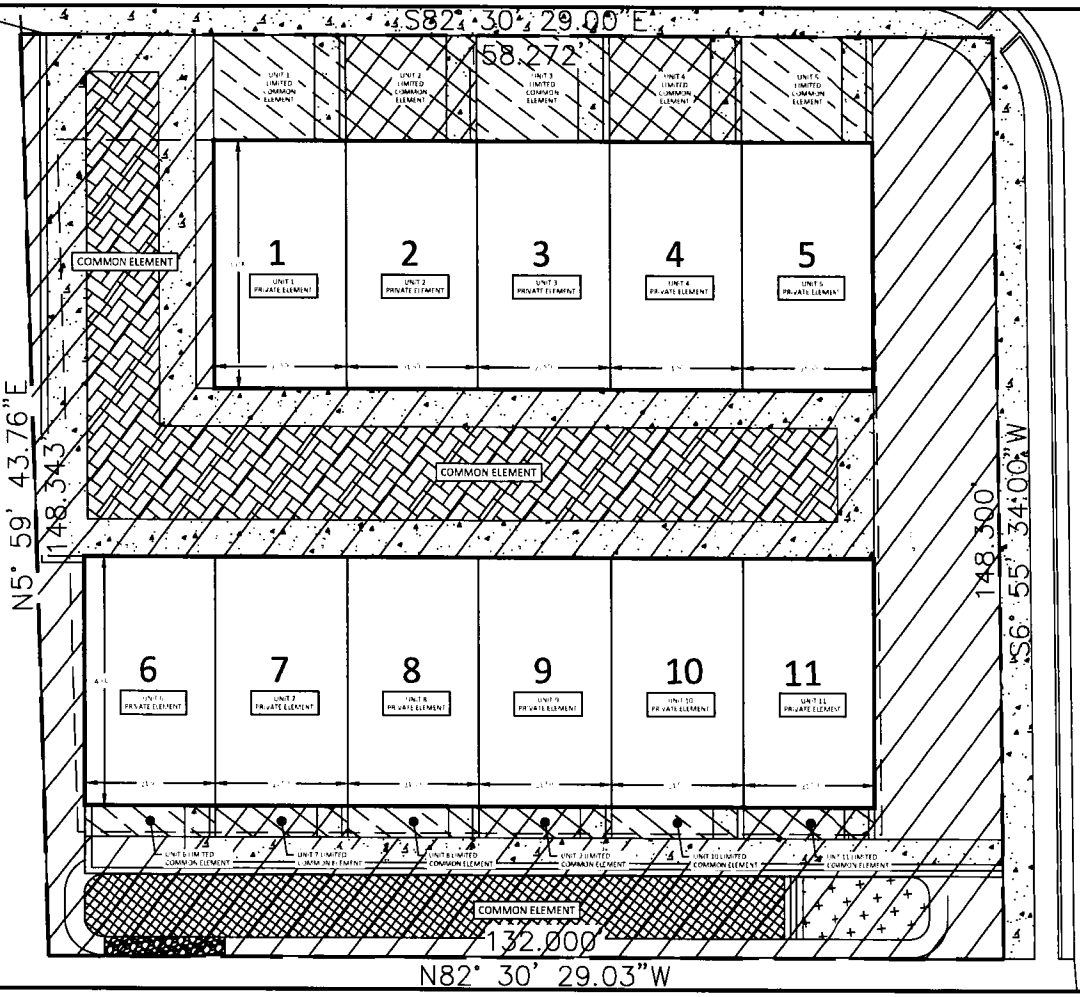
## Property Subjected to the Terms of the Declaration

Being the property described and depicted on the Final Plat Re-Subdivision of Part of Lot #14 on the Map of The Horton Plan of Lots recorded as Instrument Number 20240105-0001157 with the Register's Office for Davidson County, Tennessee.

Being the same property conveyed to 603 Southgate, LLC by deeds recorded as Instrument Numbers 20211215-0165473, 20211215-0165484, 20211215-0165485 and 20220218-0019180, in the Register's Office for Davidson County, Tennessee.

# "EXHIBIT A-1"

## Depiction of the Parcel




| SITE DATA TABLE | |
|---|---|
| SITE ADDRESS | 601 E SOUTHGATE AVE<br>NASHVILLE, TN 37203 |
| PARCEL ID | 105111R90000CO<br>105111R90100CO<br>10511009100 |

0 20 40 Feet


615 DESIGN GROUP

360 QUECREEK CIRCLE, SMYRNA, TN 37167
(615) 829-6899
www.615designgroup.com


COLTYN J. MURREY
REGISTERED ENGINEER
AGRICULTURE
No. 122172
STATE OF TENNESSEE
6/27/2023

# 601 E SOUTHGATE

NASHVILLE, TN
DAVIDSON COUNTY

| REVISIONS | | |
|---|---|---|
| NUMBER | DESCRIPTION | DATE |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

| | |
|---|---|
| PROJECT #: | 1037001 |
| DESIGNED BY: | CMN |
| DRAWN BY: | CMN |
| DATE: | 6/27/2023 |

HPR EXHIBIT

1


20240220001136I

# "EXHIBIT B"

## Bylaws of Homes at Southgate & Martin Owners Association, Inc.

# BYLAWS

# OF

# HOMES AT SOUTHGATE & MARTIN OWNERS ASSOCIATION, INC.

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## ARTICLE 1: DEFINITIONS

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

## ARTICLE 2: OFFICES

**2.01. Registered Office.** The initial registered office of the corporation shall be at 1020 Crimson Way, Hendersonville, Tennessee 37075, and the name of the registered agent of the corporation is Preston Steinle.

**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 Owner shall be a Member of the corporation and no other person or entity shall automatically be entitled to membership. Developer may afford membership privileges in the form of access to the common amenities to owners of other developments of Developer in the vicinity of that certain residential real estate development known as HOMES AT SOUTHGATE & MARTIN in consideration of the payment of fees equal to the Assessments payable by a Owner or as specified in the Declaration. No person entitled to membership privileges shall be entitled to vote 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. Members who are not in default in the payment of any assessment or other charge duly levied by the Association, and who are not in violation of any other provision of the Declaration, these Association Bylaws or the Rules and Regulations of the Association (the "Governing Documents") are Members in Good Standing.

## 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 such other place as the Board may reasonably determine.

**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 later of the following events: (a) four months after no Unit is owned by Developer; or (b) ten years following conveyance of the first Unit by Developer to an Owner for the purpose of occupancy. Thereafter, an annual meeting of the Members of the corporation shall be on a date and at a time determined by the Board, 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.

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

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

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

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

**4.07. Method of Voting; Proxies.** Each Member in Good Standing (other than Developer while its weighted voting rights exist) shall be entitled to a vote for each Unit owned by such Member.

DEVELOPER SHALL HAVE FIVE (5) VOTES FOR EACH UNIT OWNED UNTIL THE LATER OF (A) THE DATE WHEN ONE-HUNDRED PERCENT (100%) OF THE UNITS

SUBJECTED TO THE DECLARATION OR BY ANY SUPPLEMENTARY DECLARATION ARE NOT OWNED BY DEVELOPER, (B) TEN (10) YEARS FROM THE LATER OF THE DATE THE DECLARATION IS RECORDED OR THE DATE OF RECORDATION OF THE LAST SUPPLEMENTARY DECLARATION OR (C) WHEN, IN ITS DISCRETION, DEVELOPER SO DETERMINES.

No Member, other than the Developer and, shall be entitled to vote at any meeting of the corporation until such Member has presented evidence of ownership of a Unit in HOMES AT SOUTHGATE & MARTIN 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 be cast by such Member in person, by a proxy given by such Member to his duly authorized representative bearing a date not more than eleven months prior to such meeting or by any other means allowable under the Tennessee Nonprofit Corporation Act, Tenn. Code Ann. §§ 48-51-101, *et seq.* or by any other means permitted by this Bylaws or Tennessee law. Proxies shall be filed with the secretary of the corporation prior to or at the time of the meeting. If title to a Unit shall be in the name of two or more persons, all 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 in which case the unanimous vote of all such Joint Co-owners 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 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.

**4.09 Electronic Communications; Virtual Meetings; Electronic Voting.**

(a) Notwithstanding any other provision of these Bylaws or the Declaration to the contrary, the Association, the Board and the Members may cast votes, deliver proxies and communicate on any subject required or permitted by the Bylaws or the Declaration using email or any other electronic means of communication approved in writing by the Board.

(b) Notwithstanding any other provision of these Bylaws or the Declaration to the contrary, a Member or proxy holder may participate in any meeting of Members via conference telephone or other means of multi-way remote communication approved in writing by the Board. In addition, at the sole and absolute discretion of the Board, any meeting of the Members may be conducted wholly or in part via reasonably available audio and/or video technology so long as:

(i) all Members participating in the meeting have reasonable access to such technology;

(ii) the technology affords all persons participating in the meeting the ability to communicate with all other persons participating in the meeting;

(iii) the technology allows the Board to ascertain whether a quorum is present; and

(iv) the technology allows Members to vote and the Board to collect and count votes, and to verify the authenticity of a vote transmitted by electronic means.

(c) The Board may also utilize an online voting system under the following conditions:

(i) Members receive written notice of the opportunity to vote through the online voting system;

(ii) the Board establishes procedures and deadlines for Members to consent, in writing, to online voting; and

(iii) the Board establishes procedures and deadlines for Members to revoke their previous consent to utilize the online voting system

(d) After the Board establishes such procedures, a Member may cast their vote on any issue or item brought up for a vote through an internet-based online voting system if:

(i) the Member consents in writing, to online voting;

(ii) the Association provides each Member with the means to authenticate the Member's identity within the online voting system;

(iii) the Association provides each Member with the means to confirm at least fourteen (14) days prior to the date of the vote or the voting deadline, that the Member can successfully utilize the online voting system;

(iv) the online voting system can:

(1) authenticate the Member's identity;

(2) authenticate the validity of each electronic vote to ensure that the vote is not altered in transit;

(3) transmit a receipt from the online voting system to each Member who casts an electronic vote;

(4) permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific Member (this provision only applies to secret ballots); and

(5) store and keep electronic ballots accessible to election officials for recount, inspection, and review.

(e) A Member voting electronically pursuant to the provisions of these Bylaws shall be counted as present at a meeting for purposes of determining a quorum.

(f) A Member's right to vote by traditional means shall not be abridged by the foregoing provisions regarding electronic and online voting. A Member's consent to online voting shall remain valid until the Member revokes their consent in a writing delivered to the Association.

(g) the Board may adopt reasonable rules and regulations regarding electronic communications, online voting and virtual meetings including without limitation rules for who may participate in meetings, whether meeting participants must connect individually or whether participants may connect in a group of two (2) or more, how participants seek recognition from the floor, how motions are made, time limits on participants' speaking at the meeting, and the manner in which votes are submitted, counted and/or verified.

## ARTICLE 5: DIRECTORS

**5.01. Management.** The business and affairs of the corporation shall be managed by its Board 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 Association Charter, or these Association Bylaws, directed or required to be exercised or done by the Members. Such Board powers include without limitation the following: (a) the power to adopt reasonable rules and regulations governing the residents, visitors and property within the Parcel; (b) the power to adopt a system of fines for violation of the Governing Documents; and (c) the power to cure violations of the Declaration, Rules or Regulations by "self-help" including without limitation the power to tow vehicles within the Parcel which are parked or otherwise in violation of the Declaration or any rule properly adopted by the Board.

**5.02. Number; Qualifications; Election; Term.** The initial Board shall consist of three (3) Directors, each of whom shall be a Member of the Association or a person appointed by the Developer, its subsidiaries or affiliates. Each Director on the initial Board shall serve a term of two (2) years or until his/her successor shall be elected and qualify. The Directors shall be appointed by the Developer until the later of (a) the conveyance of one hundred percent (100%) of the Units to Owners other than Developer (b) ten years after the date the Declaration or the last Supplementary Declaration is recorded or (c) when Developer, in its sole discretion, so determines. Directors shall serve without compensation. After transfer of control to the Owners as provided in the Declaration, the Members shall elect three (3) Directors each of whom must be a Member in Good Standing (as defined above). The initial Member-elected Directors 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 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 at which time, a successor shall be elected to serve the remaining unexpired term of his predecessor in office, if any. Any Directorship to be filled by reason of an increase in the number of Directors shall be filled by election at an annual meeting of Members or at a special meeting of Members called for that purpose.

**5.04. Place of Meetings.** The Directors of the corporation shall hold their meetings, both regular and special within Davidson County, Tennessee, or such other place as the Board may reasonably determine.

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

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

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

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

**5.09. Committees Having Board Authority.** The Board of Directors may, by resolution approved by vote or written consent by a majority of the whole Board, designate an Architectural Control Committee, a Nominating Committee for members of the Board of Directors and such other committees as deemed necessary to consist of two (2) or more of the Directors of the corporation. Any such committee, to the extent provided in said resolution, shall and may exercise all of the authority of the Board of Directors in the management of the business and affairs of the corporation, except where action of the full Board of Directors is required by statute or the Charter. The Board may remove any member of any committee at any time with or without cause.

**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 HOMES AT SOUTHGATE & MARTIN development as the Board of Directors shall authorize, and the Board of Directors may delegate to such management agent such duties with respect to management, repair and maintenance of the HOMES AT SOUTHGATE & MARTIN 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, or some other person or entity.

**5.13 Electronic Communications; Virtual Meetings.** Notwithstanding any other provision of these Bylaws or the Declaration to the contrary, the Board may meet, communicate and cast votes on any matter coming before the Board by any electronic means of communication approved by the Board which is reasonably affordable and available to all Directors.

## 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, notice may be given by any means permitted under these Bylaws or Tennessee law. 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 addressed to the recipient at the address shown on the records of the Association.

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

## ARTICLE 7: OFFICERS

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

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

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

**7.04. Salaries.** Officers shall serve without compensation.

**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 become vacant for any reason, the vacancy may be filled by the Board of Directors.

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

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

**7.08. Treasurer.** The treasurer shall have the custody of the corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements of the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such



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disbursements, shall render to the president and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the corporation, and shall perform such other duties as the Board of Directors may prescribe. If required by the Board of Directors, he shall give the corporation a bond in such form, in such sum, and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement, or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

## ARTICLE 8: MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

**8.07. Amendment of Bylaws.** So long as Developer owns any Unit or other property within the Parcel, Developer may each unilaterally amend or repeal these Bylaws without the joinder or approval of any Member. These Bylaws may also be amended or repealed by the affirmative vote of at least two-thirds (2/3) of the percentage values of those votes entitled to be cast by Members qualified to vote. Notwithstanding the foregoing, if so required by applicable and effective federal law or regulations, for so long as the Developer maintains a weighted vote as described in the Declaration, any and all amendments to these Bylaws shall be subject to the veto of HUD/VA.

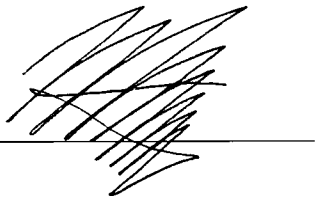
**8.08. Table of Contents; Headings.** The table of contents and headings used in these bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation.

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

**8.10. Rules and Regulations; Fines.** The Board, without a vote of the Owners, may adopt reasonable rules and regulations governing the use and occupancy of the Common Area and the Units. Such rules and regulations shall become effective upon publication to Owners and residents by any reasonable means (or combination thereof) including distribution by mail, or email, posting on the Association's website and/or recordation with the Davidson County Register of Deeds. The Board's rule-making authority shall include without limitation the authority to adopt a program for administering leases of Units and homes within HOMES AT SOUTHGATE & MARTIN and the authority to charge a fee to each Owner leasing their Unit to defray the expense to the Association of the lease administration program. The Board shall also have the authority to levy fines against Owners and residents of HOMES AT SOUTHGATE & MARTIN for violations of the rules, regulations, the Declaration or these Bylaws. Fines shall be in amounts to be reasonably determined by the Board, in its sole discretion. The Board may adopt and amend from time to time a schedule of fines which shall be published to Owners and residents by any reasonable means.

## CERTIFICATION

I hereby certify that the foregoing Bylaws were adopted by the Homes at Southgate & Martin Owners Association, Inc. on the 13 day of February, 2024.



President

# EXHIBIT C

## Attorney's Certification

LAW OFFICE OF
ALVIN L. HARRIS
3923 SKYLINE DRIVE
NASHVILLE, TN 37215

ALVIN L. HARRIS
(615) 479-5959
aharris@bhlawtn.com

KATHY HARRIS
OFFICE MANAGER
(615) 305-2632
kharris@bhlawtn.com

February 20, 2024

Re: *Homes at Southgate & Martin; Davidson County, Tennessee*

To Whom It May Concern:

I am an attorney licensed to practice in the State of Tennessee. I have prepared legal documents required by Tenn. Code Ann. § 66-27-101, *et seq.* for the creation of the planned unit development known as Homes at Southgate & Martin, including the Charter and corporate bylaws of Homes at Southgate & Martin Owners Association, Inc., and the Declaration of Covenants, Conditions and Restrictions for Homes at Southgate & Martin recorded or to be recorded with the Davidson County Register of Deeds. Such documents are in compliance with said statute and a planned unit development is created thereunder. This opinion is given for the limited purpose of complying with Tenn. Code Ann. § 66-27-103(b).

Sincerely,

Alvin L. Harris

# Certificate of Authenticity

I, Kathryn Harris, do hereby make oath that I am a licensed attorney and/or the custodian of the original version of the electronic document tendered for registration herewith and that this electronic document is a true and exact copy of the original document executed and authenticated according to law on 2-17-24.

Date

2-17-24 Kathy Harris

Affiant Signature

2-20-24

Date

State of TENNESSEE

County of DAVIDSON

Sworn to and subscribed before me this 20 day of FEBRUARY, 2024.

Notary's Signature

My Commission Expires: My Commission Expires May 3, 2027

Date

Notary's Seal (if on paper)

TYLER HENRY
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY