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Fees $627 00 Taxes $0 00
Davidson County
DEEDMAST
125 pgs
20251031-0086864

DECLARATION OF HORIZONTAL PROPERTY REGIME FOR ZERMATT

Davidson County, Tennessee

Declarant **MERITAGE HOMES OF TENNESSEE, INC.**, an Arizona corporation

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DECLARATION OF HORIZONTAL PROPERTY REGIME FOR ZERMATT

This Declaration of Horizontal Property Regime for Zermatt (the "**Declaration**") is made by **MERITAGE HOMES OF TENNESSEE, INC.**, an Arizona corporation (the "**Declarant**"), and is as follows

RECITALS:

A. **TPG AG EHC III (MTH) MULTI STATE 2, LLC**, a Delaware limited liability company, is the current record title owner of that certain the real property in Davidson County, Tennessee ("**AG**"), as more particularly described on Exhibit "A" attached hereto and incorporated herein (the "**Property**") AG executes this Declaration to evidence its consent to subject the Property to the terms and provisions herein. It is expressly acknowledged that AG shall be permitted to assign its rights hereunder to any person or entity who acquires the Property or any portion thereof, and any such assignment shall be Recorded in the real property records of Davidson County, Tennessee Meritage Homes of Tennessee, Inc has the right to acquire the portion of Property owned by AG pursuant to that certain Option Agreement dated April 28, 2025 (the "**Option Agreement**"), entered into between AG, as Owner, and Meritage Homes of Tennessee, Inc , as Builder, as evidence by that certain Memorandum of Option Agreement Recorded under Document No 20250429-0032941, Register of Deeds of Davidson County, Tennessee.

B. Declarant and AG desire to create a uniform plan for the development, improvement, and sale of the Property, and for Declarant to act as the "Declarant" for all purposes under this Declaration

C. The Property is hereby submitted to the terms and provisions of the Horizontal Property Act of the State of Tennessee, Tenn Code Ann , Sections 66-27-101, et seq , for the purpose of creating Zermatt Horizonal Property Regime

NOW, THEREFORE, it is hereby declared that (i) the Property will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, including the representations and reservations of Declarant, set forth on Appendix "A", attached hereto, which will run with the Property and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof, and (ii) each contract or deed which may hereafter be executed with regard to the Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed

ARTICLE 1
DEFINITIONS

Unless otherwise defined in this Declaration, terms defined in Section 66-27-102 of the Act have the same meaning when used in this Declaration The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used

1 1 "**Act**" means Horizontal Property Act of the State of Tennessee, Tenn Code Ann., Section 66-27-101, et seq , as it may be amended from time to time

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

1.3 "**Architectural Reviewer**" means Declarant or its designee during the Development Period After expiration of the Development Period, the rights of the Architectural Reviewer will automatically terminate

1.4 "**Assessment**" means any charge levied against a Unit or Owner by the Association, pursuant to the Documents, the Act, or Applicable Law, including but not limited to Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments as defined in *Article 6* of this Declaration.

1.5 "**Association**" means Zermatt Residential Community, Inc , a Tennessee non-profit corporation, the Members of which shall be the Owners of Units within the Regime The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Charter, the Bylaws, the Act, and Applicable Law.

1 6 "**Board**" means the Board of Directors of the Association.

1 7 "**Building**" means a residential dwelling constructed within a Unit.

1 8 "**Bylaws**" mean the bylaws of the Association, attached hereto as Attachment 1, as they may be amended from time to time.

1 9 "**Charter**" means the Charter of the Association filed in the Office of the Secretary of State of Tennessee, as the same may be amended from time to time, attached hereto as Attachment 2, as they may be amended from time to time

1 10 "**City**" means the City of Nashville, Tennessee

1 11 "**Common Element**" means all portions of the Property save and except the Units (which Units encompass the Private Elements) All Common Elements are "**General Common Elements**" except if such Common Elements have been allocated as "**Limited Common Elements**" by this Declaration for the exclusive use of one or more but less than all of the Units

1 12 "**Common Expenses**" means the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Regime, including but not limited to those expenses incurred for the maintenance, repair, replacement and operation of the Common Elements

1 13 "**Community Manual**" means the community manual, if any, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the Regime The Community Manual may include the Bylaws and Rules and policies governing the Association as the Board determines to be in the best interest of the Association, in its sole and absolute discretion The Community Manual may be amended, from time to time, by the Declarant during the Development Period, or a Majority of the Board, provided, however, that during the Development Period, any amendment to the Community Manual must be approved in advance and in writing by the Declarant.

1 14 "**Declarant**" means **MERITAGE HOMES OF TENNESSEE, INC.**, an Arizona corporation, its successors and assigns, or any person or entity to whom all of Declarant's rights reserved hereunder are assigned in accordance with the provisions hereof. The Declarant's rights shall only be assigned by written, Recorded instrument expressly assigning those rights So long as AG owns any Unit or portion of the Property, any assignment of the Declarant's rights under this Declaration shall require the prior written consent of AG. Any purported assignment without such consent shall be deemed void and of no force and effect Notwithstanding the foregoing, if the Option Agreement is terminated prior to the purchase by Meritage Homes Of Tennessee, Inc from AG of all of the Property as evidenced by the recording of a Notice of Termination of Option, AG shall, upon recordation of a Notice to Succeed to Declarant Rights, automatically become the Declarant under this Declaration, in which event all references to "Declarant" shall thereafter mean and refer only to AG or its successors or assigns, and after which event **MERITAGE HOMES OF TENNESSEE, INC.**, an Arizona corporation (or its successors or assigns) shall no longer be the Declarant under this Declaration or be entitled to exercise any of the rights of Declarant, provided, however, that AG shall not be liable to any Member or any other person for any act or omission of Declarant including, without limitation, Declarant's failure to pay any amounts owing or to be paid or reserved for hereunder or as may otherwise be required by statute or at law or to perform any act or obligation required to be performed by Declarant hereunder or as may otherwise be required by statute or at law, arising prior to the date AG succeeds to Declarant's rights hereunder, and AG shall assume the obligations under this Declaration only for matters and

obligations arising or to be performed from and after the date AG succeeds to Declarant's rights hereunder, and AG is hereby released and discharged from any and all obligations under this Declaration accruing prior to the date AG succeeds to Declarant's rights hereunder..

1 15 "**Declarant Control Period**" means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix "A" of this Declaration The Declarant Control Period shall terminate upon expiration or termination of the Development Period

1 16 "**Declaration**" means this document, as it may be amended from time to time.

1.17 "**Development Period**" means the seven (7) year period beginning on the date this Declaration is Recorded, during which Declarant has certain rights as more particularly described on Appendix "A", attached hereto, including rights related to development, construction, expansion, and marketing of the Property The Development Period is for a term of years and does not require that Declarant own any portion of the Property Declarant, with the consent of AG so long as AG owns any Unit or portion of the Property, may terminate the Development Period by the Recording of a notice of termination

During the Development Period, Appendix "A" has priority over the terms and provisions of this Declaration.

1 18 "**Documents**" mean, singly or collectively as the case may be, this Declaration, the Plat, attached hereto as Attachment 3, the Charter, Bylaws, the Community Manual, and the Rules of the Association, as each may be amended from time to time An appendix, attachment, exhibit, schedule, or certification accompanying a Document is a part of that Document

The Documents are subject to amendment or modification from time to time. By acquiring a Unit in the Zermatt Horizontal Property Regime, you agree to comply with the terms and provisions of the Documents, as amended or modified.

1 19 "**General Common Elements**" mean Common Elements which are not Limited Common Elements General Common Elements refer to those portions of the Property that are designated as "GCE", "General Common Element", "General Common Area", "Common Area", or by the notation "General Common Elements", "GCE", "General Common Area", "Common Area", or "Common Areas" on Attachment 3, attached hereto

1.20 "**Improvement**" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, Buildings, outbuildings, storage sheds, patios, recreational facilities, swimming pools, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae,

exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, irrigation, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.21 "**Irrigation Maintenance Services**" means irrigation of the Yard Area (as defined herein) and the repair and maintenance of the irrigation systems, as originally installed by the Declarant for the Yard Area, which will include the following: (i) repair or replacement of broken, damaged or clogged sprinkler heads, (ii) repair or replacement of cut surface mounted drip tubes or broken pipes below ground, (iii) repair or replacement of control valves; (iv) repair or replacement of system controllers, and (v) repair or replacement of cut/damaged control wires Irrigation Maintenance Services shall not include alterations, additions or modifications to the irrigation system (based on reconfigured landscaping or otherwise). Notwithstanding the foregoing, the Declarant during the Development Period and the Board thereafter, will have the right to terminate or modify the Irrigation Maintenance Services from time to time

1 22 "**Landscape Services**" mean the following services to be provided to the Yard Area (as defined herein): (i) mowing and edging all turf areas at least once per week during the months of May through September of each year, and on an as-needed basis during the months of October through April, and (ii) applying fertilizer to the turf areas twice a year; (iii) trimming and removing plant material and clippings located on the turf areas (e.g., grass and shrubs). Notwithstanding the foregoing, the Declarant during the Development Period, and the Board thereafter, will have the right to modify the Landscape Services provided by the Association from time to time. Tree pruning and tree fertilization are the responsibility of the Owner. Dead trees are to be replaced at each Unit Owner's expense. Notwithstanding the foregoing, the Board will have the right to discontinue or modify the Landscape Services, provided hereunder from time to time and at any time.

1.23 "**Limited Common Elements**", if any, mean those portions of the Property reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are designated as "LCE", "Limited Common Elements", or "Limited Common Areas" on Attachment 3, attached hereto and as provided in *Section 5 3* and *Section 5 4* of this Declaration

1 24 "**Majority**" means more than half

1 25 "**Member**" means a member of the Association, each Member being an Owner of a Unit, unless the context indicates that member means a member of the Board or a member of a committee of the Association.

1.26 "**Mortgagee**" means a holder, insurer, or guarantor of a purchase money mortgage secured by a Recorded senior or first deed of trust lien against a Unit

1 27 "**Owner**" means a holder of fee simple title to a Unit Declarant and/or AG are the initial Owner of all Units. Mortgagees who acquire title to a Unit through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

1 28 "**Person**" means any individual or entity having the legal right to hold title to real property

1 29 "**Plat**" means the plat attached hereto as Attachment 3, as changed, modified, or amended in accordance with this Declaration.

1 30 "**Private Elements**" means the lot area upon which each Unit is located and the Improvements now or hereafter located thereon as shown on Attachment 3 A Unit Owner's ownership of a Unit shall include fee simple ownership and use of the Private Elements for such Unit

1.31 "**Property**" means the real property located in Davidson County, Tennessee, as more particularly described on Exhibit "A" attached hereto and incorporated herein, together with all Improvements thereon and all easements, rights, and appurtenances thereto

1.32 "**Record**", "**Recordation**", "**Recorded**", and "**Recording**" means to record or recorded in the Register of Deeds of Davidson County, Tennessee

1 33 "**Regime**" means the Property, Units, General Common Elements, and Limited Common Elements that comprise the horizontal property regime established by this Declaration.

1 34 "**Resident**" means an occupant or tenant of a Unit, regardless of whether the Person owns the Unit

1.35 "**Rules**" means rules and regulations of the Association adopted in accordance with the Documents or the Act The initial Rules may be adopted by Declarant for the benefit of the Association.

1.36 "**Underwriting Lender**" means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Administration (FHA), Federal Home Loan Mortgage Corporation (Freddie Mac), the Veterans Administration, or Federal National Mortgage Association (Fannie Mae), singularly or collectively The use of this term and these institutions may not be construed as a limitation on an Owner's financing options or as a representation that the Property is approved by any institution

1 37 "**Unit**" means a physical portion of the Property designated by this Declaration for separate ownership, the boundaries of which are shown on the Plat attached hereto as Attachment 3, as further described in *Section 5.2* of this Declaration. A Unit shall include the Private Elements and the residence and Improvements now or hereafter located thereon

1.38 "**Yard Area**" means all front yard space within a Unit In the event of a dispute concerning what constitutes the Yard Area of a Unit, the Board's determination of such area will be final, binding and conclusive.

ARTICLE 2
PROPERTY SUBJECT TO DOCUMENTS

2.1. Subject To Documents The Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations as set forth on Appendix "A", attached hereto, which run with the Property, bind all Persons having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property

2.2. Additional Property Additional real property may be annexed into the Regime and subjected to the Declaration and the jurisdiction of the Association with the approval of the Owners holding at least sixty-seven percent (67%) of the total votes in the Association, or, during the Development Period, unilaterally, by Declarant, with the consent of AG so long as AG owns any Unit or portion of the Property, as permitted in Appendix "A" Annexation of additional property is accomplished by the Recording of a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may include a description of the Units added to the Regime if the Declarant elects to create Units upon Recordation of the declaration of annexation or Declarant may elect to create additional Units or Common Elements on the additional property subsequent to the Recordation of the declaration of annexation No assurance is given to the dispersion of new Units, total number of new Units, or size of such Units. Upon the annexation of such real property into the Regime, such land will be considered part of the Property for the purposes of this Declaration

2.3. Adjacent Land Use Declarant and AG make no representations of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property

2.4. Recorded Easements, Licenses and Other Encumbrances. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, leases, and encumbrances of Record, including any shown on a Recorded plat, each of which is incorporated herein by reference

Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-Recorded easements, licenses, leases, and encumbrances. Each Owner further agrees to maintain any easement that crosses the Owner's Unit and for which the Association does not have express responsibility.

2.5. Common Elements. The Common Elements of the Property consist of all of the Property, save and except the Units The designation of Common Elements is determined by this Declaration The Declarant may install, construct, or authorize certain Improvements on Common Elements in connection with the development of the Property, and the cost thereof is not a Common Expense of the Association Thereafter, all costs attributable to Common Elements, including maintenance, insurance, and enhancements, are automatically the responsibility of the Association, unless this Declaration elsewhere provides for a different allocation for a specific Common Element.

ARTICLE 3
PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

3.1. General In addition to other easements, rights and restrictions established by the Documents, the Property is subject to the easements, rights and restrictions contained in this *Article 3*

3.2. Owner's Easement of Enjoyment Every Owner is granted a right and easement of enjoyment over the General Common Elements and the use of Improvements therein, subject to other limitations, rights and easements contained in the Documents. An Owner who does not occupy a Unit delegates this right of enjoyment to the Residents of the Owner's Unit, and is not entitled to use the General Common Elements. In addition, every Owner is granted an easement over the General Common Elements, to the extent necessary, to provide access to an Owner's Unit and for utilities serving the Owner's Unit The right of access for necessary ingress and egress to an Owner's Unit cannot be suspended by the Board for violations of the Documents or nonpayment of Assessments.

3.3. Owner's Maintenance Easement Each Owner is hereby granted an easement over and across any adjoining Unit and Common Elements to the extent reasonably necessary to maintain or reconstruct such Owner's Unit, subject to the consent of the Owner of the adjoining Unit, or the consent of the Board in the case of Common Elements, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Unit or Common Element Requests for entry into an adjoining Unit must be made to the Owner of such Unit in advance. The consent of the adjoining Unit Owner will not be unreasonably withheld Access to an adjoining Unit is limited, except in the case of an emergency that would threaten injury to person or property unless such maintenance was immediately performed, to Monday through Friday, between the hours of 8 a m until 6 p.m , and then only in conjunction with actual maintenance or reconstruction activities.

Access to the Common Elements for the purpose of maintaining or reconstructing any Unit must be approved in advance and in writing by the Board. Absent an emergency that would threaten injury to person or property unless such maintenance was immediately performed, the Board may require that access to the Common Elements be limited to Monday through Friday, between the hours of 8 a m. until 6 p.m , and then only in conjunction with actual maintenance or reconstruction activities The Board may require that the Owner abide by additional reasonable rules with respect to use and protection of the Units and the Common Elements during any such maintenance or reconstruction. If an Owner damages an adjoining Unit or Common Element in exercising the easement granted hereunder, the Owner will be required to restore the Unit or Common Element to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Board or the Owner of the damaged Unit

Notwithstanding the foregoing, no Owner, other than the Declarant, shall perform any work to any portion of the Owner's Unit or the Common Elements unless such work is approved in advance and in writing by the Architectural Reviewer.

3.4. Owner's Ingress/Egress Easement. Each Owner is hereby granted a perpetual easement over the Property, as may be reasonably required, for vehicular and pedestrian ingress to and egress from the Owner's Unit or the Limited Common Elements assigned thereto. Such easement shall be subject, in any event, to any Rules governing or limiting each Owner's right of ingress and egress granted hereby.

3.5. Owner's Encroachment Easement. Every Owner is granted an easement for the existence and continuance of any encroachment by his Unit on any adjoining Unit or Common Element now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement or movement of any portion of a Building or other Improvement, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement stands The easement granted herein is not intended to permit the continuance of any Improvement installed by an Owner not otherwise approved in advance by the Architectural Reviewer.

3.6. Easement of Cooperative Support. Each Owner is granted an easement of cooperative support over adjoining Units and Common Elements as needed for the common benefit of the Property, or for the benefit of Units that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Unit, each Owner (i) acknowledges the necessity for cooperation in a horizontal property regime, (ii) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association, (iii) agrees to provide access to his Unit and Limited Common Elements when needed by the Association to fulfill its duties, and (iv) agrees to refrain from actions that interfere with the Association's maintenance and operation of the Property

3.7. **Association's Access Easement**. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and the Owner's Unit and all Improvements thereon for the following purposes

(i) To perform inspections and/or maintenance that is permitted or required of the Association by the Documents or by Applicable Law, as applicable

(ii) To perform maintenance that is permitted or required of the Owner by the Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance.

(iii) To enforce the Documents

(iv) To exercise self-help remedies permitted by the Documents or by Applicable Law.

(v) To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.

(vi) To respond to emergencies.

(vii) To perform any and all functions or duties of the Association as permitted or required by the Documents or by Applicable Law.

(viii) To perform all Irrigation Maintenance Services and Landscape Services.

3.8. **Utility Easement**. The Declarant, during the Development Period, and thereafter the Association, may grant permits, licenses, and easements over the Common Elements for utilities, and other purposes reasonably necessary for the proper operation of the Regime. Declarant, during the Development Period, and the Association thereafter, reserves the right to grant easements over and across the Units and Common Elements for utilities necessary or required, as determined by the Declarant and/or the Association, as applicable, to provide utilities to the Units or property otherwise owned by the Declarant. The easements granted hereunder by the Declarant or the Association, as applicable, will not unreasonably interfere with the use of any Unit for residential purposes. A company or entity, public or private, that is approved by Declarant during the Development Period or the Board thereafter, and is furnishing utility service to the Property, is granted an easement over the Property, including without limitation the public utility easement areas shown on the Plat, for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property Utilities may include, but are not limited to, water, irrigation, sewer, trash removal, electricity, gas, electronic communications and internet, telephone, master or cable television, and security

NOTICE

PLEASE READ CAREFULLY THE FOLLOWING PROVISIONS ENTITLED "SECURITY" AND "INJURY TO PERSON OR PROPERTY". THE PROVISIONS LIMIT THE RESPONSIBILITY OF DECLARANT AND THE ASSOCIATION FOR CERTAIN CONDITIONS AND ACTIVITIES.

3.9. Security. THE ASSOCIATION MAY, BUT IS NOT OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTY DESIGNED, EITHER DIRECTLY OR INDIRECTLY, TO IMPROVE SAFETY IN OR ON THE PROPERTY. EACH OWNER AND RESIDENT ACKNOWLEDGES AND AGREES, FOR HIMSELF AND HIS GUESTS, THAT DECLARANT, AG, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES ARE NOT PROVIDERS, INSURERS, OR GUARANTORS OF SECURITY WITHIN THE PROPERTY EACH OWNER AND RESIDENT ACKNOWLEDGES AND ACCEPTS HIS SOLE RESPONSIBILITY TO PROVIDE SECURITY FOR HIS OWN PERSON AND PROPERTY, AND ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OWNER AND RESIDENT FURTHER ACKNOWLEDGES THAT DECLARANT, AG, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE OWNER OR RESIDENT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE, BURGLARY, AND/OR INTRUSION SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY EACH OWNER AND RESIDENT ACKNOWLEDGES AND AGREES THAT DECLARANT, AG, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES MAY NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN

3.10. Injury to Person or Property NEITHER THE DECLARANT, AG, THE ASSOCIATION, NOR THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE A DUTY OR OBLIGATION TO ANY OWNER, RESIDENT OR THEIR GUESTS· (A) TO SUPERVISE MINOR CHILDREN OR ANY OTHER PERSON, (B) TO FENCE OR OTHERWISE ENCLOSE ANY LIMITED COMMON ELEMENT, GENERAL COMMON ELEMENT, OR OTHER IMPROVEMENT; OR (C) TO PROVIDE SECURITY OR PROTECTION TO ANY OWNER, RESIDENT, OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, AND INVITEES FROM HARM OR LOSS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER AGREES THAT THE LIMITATIONS SET FORTH IN THIS *SECTION 3 10* ARE REASONABLE AND CONSTITUTE THE EXERCISE OF ORDINARY CARE BY THE ASSOCIATION, THE DECLARANT, AND AG EACH OWNER AGREES TO

INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, DECLARANT, AG AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE REGIME TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER, RESIDENT OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, OR INVITEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY

3.11. Easement to Inspect and Right To Correct Until the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, Improvement, or condition that may exist on any portion of the Property, including the Units, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right By way of illustration but not limitation, relocation of mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with Applicable Law. This *Section 3 11* may not be construed to create a duty for Declarant, the Association, any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's written and acknowledged consent In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant, and the Declarant's architect, engineer, other design professionals, builder, and general contractor, an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and each Owner's Unit and all Improvements thereon for the purposes contained in this *Section 3 11*

3.12. Private Streets. Any private streets located within the Property are General Common Elements and are administered and maintained by the Association The Association, acting through the Board, has the express authority to adopt, amend, repeal, and enforce Rules for use of private streets, including but not limited to: (i) identification of vehicles used by Owners, Residents and their guests, (ii) designation of parking or no-parking areas; (iii) limitations or prohibitions on curbside parking, (iv) removal or prohibition of vehicles that violate applicable Rules, and (v) fines for violations of applicable Rules Unless otherwise approved in advance and in writing by the Board, parking on any private streets within the Property is prohibited

ARTICLE 4
DISCLOSURES

4.1. Water Quality Facilities, Drainage Facilities and Drainage Ponds. The Property may include one or more water quality facilities, sedimentation, drainage and

detention facilities, or ponds which serve all or a portion of the Property The Association may be obligated to inspect, maintain and administer such water quality facilities, drainage facilities, and drainage ponds in good and functioning condition and repair. Each Owner is advised that the water quality facilities, sedimentation, drainage and detention facilities and ponds are an active utility feature integral to the proper operation of the Regime and may periodically hold standing water Each Owner is advised that entry into the water quality facilities, sedimentation, drainage and detention facilities or ponds may result in injury and is a violation of the Rules, unless otherwise approved by the Association.

4.2. **Construction Activities.** Declarant will be constructing portions of the Regime and engaging in other construction activities related to the construction of Units and Common Elements Such construction activities may, from time to time, produce certain conditions within the Regime, including, without limitation. (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke, (iii) noxious, toxic or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of Persons on the Regime. Notwithstanding the foregoing, all Owners and Residents agree that such conditions on the Regime resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of this Declaration

4.3. **Budgets.** Budgets prepared in conjunction with the operation and administration of the Regime are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known

ARTICLE 5
UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

5.1. **Initial Submitted Units and Maximum Number of Units**. The Regime initially includes one-hundred thirty-three (133) Units, and one-hundred fifty (150) is the maximum number of Units which may be created During the Development Period, Declarant, as permitted in Appendix "A", has reserved the right to create a maximum of one-hundred fifty (150) Units on the Property and additional property added to the Regime To add Units to the Regime, Declarant during the Development Period may, from time to time, file an amendment to this Declaration creating such additional Units To add additional Units to the Regime, Declarant, with the prior written consent of AG so long as AG owns any Unit or portion of the Property, shall prepare, execute, and Record an amendment to this Declaration and the Plat which amendment will. (i) assign an identifying number to each new Unit, (ii) reallocate the Common Interest Allocation among all Units then existing within the Regime; (iii) describe Limited Common Elements; if any, assigned or designated to each new Unit, and (iv) with respect to new Units, include the information required by Section 66-27-107 of the Act

5.2. Units

5.2.1 Unit Boundaries. The boundaries and identifying number of each Unit are shown on the Plat attached hereto as Attachment 3. The boundaries of each Unit are further described as follows.

(i) Lower Boundary of the Unit· The horizontal plane corresponding to one hundred feet (100') below the finished grade of the surface of the land within the Unit.

(ii) Upper Boundary of the Unit The horizontal plane parallel to and one-hundred and fifty feet (150') above the lower boundary of the Unit

(iii) Lateral Boundaries of the Unit. A plane located on each side of a Unit perpendicular to the lower and upper horizontal planes, from the lower boundary of the Unit to the upper boundary of the Unit, as described and defined on Attachment 3.

Ownership of a Unit includes the Building, including the roof and foundation, and all other Improvements located within the Unit.

5 2 2 What a Unit Includes Each Unit includes the spaces and Improvements now or hereafter constructed within the boundaries of the Unit defined in *Section 5.2.1* above, including without limitation the roofs and foundations of any such Improvements, landscaping, driveways, parking areas, sidewalks, fences, yards, utility lines and meters (to the extent such lines and meters exclusively serve such Unit) and all other Improvements located within the Unit. In addition to the Improvements within the Unit, each Unit also includes any Improvements, fixtures, and equipment serving the Unit exclusively

5.2.3. Building Size. The space contained within the Unit is not related to the size of the Building A Building may only occupy a portion of a Unit in a location approved in advance by the Architectural Reviewer

5.3. Designation and Allocation of Limited Common Elements. Portions of the Common Elements may be allocated as Limited Common Elements on the Plat, attached hereto as Attachment 3, by use of "LCE" and the identifying number of the Unit to which the Limited Common Element is appurtenant, or by use of a comparable method of designation.

5.4. Subsequent Allocation Of Limited Common Elements. A Common Element not allocated by this Declaration or the Plat as a Limited Common Element may be so allocated only pursuant to the provisions of the Act and by the Declarant pursuant to Appendix "A" attached to this Declaration

5.5. **Common Interest Allocation** The percentage of interest in the Common Elements (the "**Common Interest Allocation**") allocated to each Unit is assigned in accordance with a ratio of one (1) to the total number of Units The same formula will be used in the event the Common Interest Allocation is reallocated as a result of any increase or decrease in the number of Units subject to this Declaration. In the event an amendment to this Declaration is filed which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Units, the reallocation will be effective on the date such amendment is Recorded.

5.6. **Common Expense Liability** The percentage of liability for Common Expenses (the "**Common Expense Liability**") allocated to each Unit and levied pursuant to *Article 6* is equivalent to the Common Interest Allocation assigned to the Unit

5.7. **Association Votes**. One (1) vote is allocated to each Unit. The one (1) vote appurtenant to each Unit is weighted equally for all votes, regardless of the other allocations appurtenant to the Unit. In other words, the one vote appurtenant to each Unit is uniform and equal to the vote appurtenant to every other Unit.

ARTICLE 6
COVENANT FOR ASSESSMENTS

6.1. **Purpose of Assessments** The Association will use Assessments for the general purposes of preserving and enhancing the Regime, and for the benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management, and operation of the Association, and any expense reasonably related to the purposes for which the Association was formed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

6.2. **Personal Obligation** An Owner is obligated to pay Assessments levied by the Board against the Owner or the Owner's Unit Payments are made to the Association at its principal office or at any other place the Board directs Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other Person regarding any matter to which this Declaration pertains. No Owner may be exempt from Assessment liability by such Owner's non-use of the Common Elements or abandonment of the Owner's Unit An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Unit

6.3. **Types of Assessments**. There are five (5) types of Assessments: Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments.

6.4. Regular Assessments

6.4.1 Purpose of Regular Assessments Regular Assessments are used for Common Expenses related to the recurring, periodic, and anticipated responsibilities of the Association, including but not limited to

(i) Maintenance, repair, and replacement, as necessary, of the General Common Elements, and Improvements, equipment, signage, and property owned by the Association

(ii) Maintenance examination and report, as required by *Section 9.4*

(iii) Utilities billed to the Association

(iv) Services obtained by the Association and available to all Units

(v) Taxes on property owned by the Association and the Association's income taxes

(vi) Management, legal, accounting, auditing, and professional fees for services to the Association

(vii) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association

(viii) Insurance premiums and deductibles.

(ix) Contributions to operational and capital reserves.

(x) Landscape Services and Irrigation Maintenance Services

(xi) Any other expense which the Association is required by Applicable Law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Regime or for enforcement of the Documents

6.4.2 Annual Budget-Regular The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association for each fiscal year The budget will take into account the estimated income and Common Expenses for the year, contributions to reserves, and a projection for uncollected receivables The Board will make the budget or a summary of the budget available to the Owner of each Unit, although failure to receive a budget or budget summary will not affect an Owner's

liability for Assessments. The Board will provide copies of the budget to Owners who make written request and pay a reasonable copy charge.

6.4 3 Basis of Regular Assessments Regular Assessments will be based on the annual budget Each Unit will be liable for its allocated share of the annual budget equal to the Common Expense Liability assigned to the Owner's Unit If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined.

6.4.4. Supplemental Increases If during the course of a year the Board determines that Regular Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency Supplemental increases will be apportioned among the Units in the same manner as Regular Assessments.

6.5. Special Assessments The Board may levy one or more Special Assessments against all Units for the purpose of defraying, in whole or in part, Common Expenses not anticipated by the annual budget or reserves Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the acquisition of real property must be approved by at least a Majority of the votes in the Association Special Assessments will be apportioned among the Units in the same manner as Regular Assessments

6.6. Utility Assessments. This *Section 6 6* applies to utilities serving the individual Units and consumed by the Residents that are billed to the Association by the utility provider, and which may or may not be sub-metered by or through the Association. In addition to Regular Assessments and Special Assessments, the Board may levy a Utility Assessment against each Unit The Board may allocate the Association's utility charges among the Units receiving the utilities by any conventional method for similar types of properties For example, if the Units are sub-metered for consumption of a utility, the Utility Assessment may be based on the sub-meter reading. The levy of a Utility Assessment may include a share of the utilities for the Common Elements, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or sub-metering services The Board may, from time to time, change the method allocation, provided the same type of method or combination of methods is used for all Units

6.7. Individual Assessments In addition to Regular Assessments, Special Assessments, and Utility Assessments, the Board may levy an Individual Assessment against an Owner and the Owner's Unit Individual Assessments may include, but are not limited to· (i) interest, late charges, and collection costs on delinquent Assessments, (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Unit into compliance with the Documents,

(iii) fines for violations of the Documents; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and copies of the Documents; (vi) insurance deductibles, (vii) reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Owner's Unit; (viii) Common Expenses that benefit fewer than all of the Units, which may be assessed according to benefit received, as reasonably determined by the Board; (ix) fees or charges levied against the Association on a per-Unit basis, and (x) "pass through" expenses for services to Units provided through the Association and to be paid by each Unit according to benefit received, as reasonably determined by the Board

6.8. **Deficiency Assessments** The Board may levy a Deficiency Assessment against the Units for the purpose of defraying, in whole or in part, the cost of repair or restoration for the Common Elements if insurance proceeds or condemnation awards prove insufficient Deficiency Assessments will be apportioned among the Units in the same manner as Regular Assessments

6.9. **Working Capital Fund** Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner of a Unit to a subsequent Owner of the Unit), a working capital fee in an amount equal to two (2) months of Regular Assessments will be paid by the transferee of the Unit to the Association for the Association's working capital fund Each working capital contribution will be collected from the transferee of a Unit upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers of a Unit will not be subject to the working capital contribution. (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien, (ii) transfer to, from, or by the Association, (iii) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, or parent, (iv) any grantee who is the domestic partner or former spouse of the grantor; (v) any grantee that is a wholly-owned entity of the grantor, and (vi) any grantee to whom a Unit is conveyed by a will or through the law of intestacy. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any working capital fund contribution attributable to a Unit (or all Units) by the Recordation of a waiver notice, which waiver may be temporary or permanent

6.10. **Due Date**. Regular Assessments are due annually, with monthly installments of the total annual Regular Assessments to be paid on the first calendar day of each month or on such other date or frequency as the Board may designate in its sole and absolute discretion, and are delinquent if not received by the Association on or before such date. Utility Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Utility, Special, Individual, or Deficiency Assessment is given

6.11. **Reserve Funds** The Association may maintain reserves at a level determined by the Board to be sufficient to cover the cost of operational and maintenance emergencies or contingencies, replacement or major repair of components of the General Common Elements or Limited Common Elements assigned to more than one (1) Owner, and deductibles on insurance policies maintained by the Association

6.12. **Declarant's Right to Inspect and Correct Accounts.** Until the termination or expiration of the Development Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts from the formation of the Association until the termination of the Declarant Control Period The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Documents or Applicable Law This *Section 6.12* may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant a right of access to the Association's books and records that is independent of Declarant's rights during the Declarant Control Period and Development Period

6.13. **Association's Right to Borrow Money**. The Board is granted the right to borrow money on behalf of the Association, subject to the ability of the Association to repay the borrowed funds from Assessments To assist its ability to borrow, the Board has the right to encumber, mortgage, or pledge any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred by the Association.

6.14. **Limitation of Interest** The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Tennessee Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of Assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by Applicable Law If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by Applicable Law, the excess amount will be applied to the reduction of unpaid Assessments to which such excess interest was applied, or reimbursed to the Owner if those Assessments are paid in full.

6.15. **Audited Financial Statements** The Association shall have an audited financial statement for the preceding full fiscal year of the Association.

6.16. **Exception**. Notwithstanding any other provision contained in this Declaration, as long as the Option Agreement is in effect, no Assessments shall be levied against Units or any other property owned by AG which remain subject to the Option Agreement.

ARTICLE 7
ASSESSMENT LIEN

7.1. Assessment Lien. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association Each Assessment is a charge on the Unit and is secured by a continuing lien on the Unit. Each Owner is placed on notice that title to such Owner's Unit may be subject to the continuing lien for Assessments attributable to a period prior to the date the Owner purchased the Unit. An express lien on each Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of Assessments

7.2. Superiority of Assessment Lien. The Assessment lien is superior to all other liens and encumbrances on a Unit, except only for· (i) real property taxes and assessments levied by governmental and taxing authorities, (ii) a Recorded deed of trust lien securing a loan for construction of Improvements upon the Unit or acquisition of the Unit, (iii) a deed of trust or vendor's lien Recorded before this Declaration; or (iv) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent Assessment became due The Assessment lien is also superior to any Recorded assignment of the right to insurance proceeds on the Unit, unless the assignment is part of a superior deed of trust lien.

7.3. Effect of Mortgagee's Foreclosure Foreclosure of a superior lien extinguishes the Association's claim against the Unit for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the sale

7.4. Notice and Release The Association's lien for Assessments is created by Recordation of this Declaration, which constitutes record notice and perfection of the lien No other Recordation of a lien or notice of lien is required However, the Board, at its option, may cause a notice of the lien to be Recorded Each lien filed by the Association must be prepared and filed by an attorney licensed to practice law in the State of Tennessee If the debt is cured after a notice has been Recorded, the Association will Record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and Recording the notice before granting the release.

7.5. Power of Sale. By accepting an interest in or title to a Unit, each Owner grants to the Association a private power of sale in connection with the Association's assessment lien The Board may appoint, from time to time, any Person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution duly adopted by the Board

7.6. **Foreclosure of Lien**. The Assessment lien may be enforced by judicial or non-judicial foreclosure A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale in any manner permitted by Applicable Law In any foreclosure, the Owner will be required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Unit at a foreclosure sale initiated by it and to acquire, hold, lease, mortgage, and convey same

ARTICLE 8
EFFECT OF NONPAYMENT OF ASSESSMENTS

An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date The Association, acting through the Board, is responsible for taking action to collect delinquent Assessments From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector Neither the Board nor the Association, however, is liable to an Owner or other Person for the Board or the Association's failure or inability to collect or attempt to collect an Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association may have pursuant to the Documents or Applicable Law

8.1. **Interest**. Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) per annum or the maximum permitted by Applicable Law If the Board fails to establish a rate, the rate is ten percent (10%) per annum

8.2. **Late Fees** Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time

8.3. **Collection Expenses**. The Owner of a Unit against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys' fees and processing fees charged by the manager.

8.4. **Acceleration** If an Owner defaults in paying an Assessment that is payable in installments, the Association may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner The entire unpaid balance of the Assessment becomes due on the date stated in the notice

8.5. **Suspension of Vote** Subject to the below-described limitations, if an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right to vote appurtenant to the Unit during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the

Association suspends an Owner's right to vote, the suspended Owner may nevertheless participate as a Member of the Association for the following activities (i) be counted towards a quorum, (ii) attend meetings of the Association, (iii) participate in discussion at Association meetings, (iv) be counted as a petitioner for a special meeting of the Association, and (v) vote to remove a director and for the replacement of the removed director If the number of suspended Members exceeds thirty percent (30%) of the total Members (co-Owners of a Unit constituting one Member), all Members are eligible to vote These limitations are imposed to prevent a Board from disenfranchising a large segment of the membership and to preserve the membership's right to remove and replace directors

8.6. **Assignment Of Rents.** Every Owner hereby grants to the Association a continuing assignment of rents to secure the payment of assessments to the Association. If a Unit's account become delinquent during a period in which the Unit is leased, the Association may direct the tenant to deliver rent to the Association for application to the delinquent account, provided the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the debt, and notice of the Owner's right to a hearing before the Board The Association must account for all monies received from a tenant and must remit to the Owner any rents received in excess of the past-due amount A tenant's delivery of rent to the Association under the authority hereby granted is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.

8.7. **Money Judgment** The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments

8.8. **Notice to Mortgagee**. The Association may notify and communicate with any holder of a lien against a Unit regarding the Owner's default in payment of Assessments

8.9. **Application of Payments** The Association may adopt and amend policies regarding the application of payments After the Association notifies the Owner of a delinquency, any payment received by the Association may be applied in the following order: (i) Individual Assessments; (ii) Deficiency Assessments; (iii) Special Assessments; (iv) Utility Assessments, and (v) Regular Assessments The Association may refuse to accept partial payment, i e , less than the full amount due and payable The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Association's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Unit Owner's account

ARTICLE 9
MAINTENANCE AND REPAIR OBLIGATIONS

9.1. Overview. Generally, the Association maintains the Common Elements, and the Owner maintains the Owner's Unit If any Owner fails to maintain its Unit, the Association may perform the work at the Owner's expense. The respective maintenance obligations of the Association and each Owner are set forth in this *Article* and are summarized on Attachment 5, however, to the extent of any conflict between the provisions of this *Article* and the summary set forth on Attachment 5, the provisions of this *Article* will control

9.2. Association Maintains The Association's maintenance obligations will be discharged when and how the Board deems appropriate Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a Common Expense, all General Common Elements, any Limited Common Elements assigned to more than one (1) Unit, and the Yard Area. The Association also maintains any component of a Unit delegated to the Association by this Declaration.

9.3. Irrigation Maintenance Services and Landscape Services

9 3.1. Generally The Association will cause the Irrigation Maintenance Services and Landscape Services to be provided to each Yard Area. The Yard Area does not include the fenced area of a Unit Therefore, Irrigation Maintenance Services and Landscape Services will not be provided to any fenced area of a Unit The Association is hereby granted an easement over and across each Unit to the extent reasonably necessary or convenient for the Association or its designated landscaping contractor to perform the Irrigation Maintenance Services and Landscape Services. Access to each Yard Area is limited to Monday through Friday, between the hours of 7 a.m until 6 p m , and then only in conjunction with actual performance of the Irrigation Maintenance Services and Landscape Services If the Association damages any Improvements located within a Unit in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements

9 3 2 Dates The Association or its designated landscape company may, from time to time, provide each Owner with a schedule of dates on which the Irrigation Maintenance Services and Landscape Services will be performed.

9.3 3. Cost The cost of all Irrigation Maintenance Services and Landscape Services will be a Common Expense Notwithstanding the forgoing, in the event that the Irrigation Maintenance Services and Landscape Services are due to negligence or willful misconduct of an Owner, an Owner's tenant, or an Owner's pet, as determined

by the Board in its sole discretion, the cost of such maintenance or repair may be levied as an Individual Assessment

9 3 4. Alterations. Any alterations in the landscaping of any portion of a Yard Area must be approved in writing by the Architectural Reviewer prior to the alterations being made.

9 3 5. Owner or Resident Repair Subject to the maintenance responsibilities herein provided, any maintenance or repair performed by an Owner or Resident that is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Resident, and the Owner and Resident shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

9.3 6 Termination or Modification of Services. The Board will have the right to discontinue or modify the Irrigation Maintenance Services and Landscape Services, or any portion of the Irrigation Maintenance Services and Landscape Services from time to time and at any time

9 3 7. RELEASE THE ASSOCIATION SHALL NOT BE LIABLE FOR INJURY OR DAMAGE TO PERSON OR PROPERTY CAUSED BY THE ELEMENTS OR BY THE OWNER OR RESIDENT OR ANY OTHER PERSON OR RESULTING FROM PROVIDING THE IRRIGATION MAINTENANCE SERVICES AND LANDSCAPE SERVICES HEREUNDER. THE ASSOCIATION SHALL NOT BE LIABLE TO ANY OWNER OR RESIDENT FOR LOSS OR DAMAGE, BY THEFT OR OTHERWISE, OF ANY PROPERTY, WHICH MAY BE STORED IN OR UPON THE YARD AREA OF ANY UNIT THE ASSOCIATION SHALL NOT BE LIABLE TO ANY OWNER OR RESIDENT, FOR ANY DAMAGE OR INJURY CAUSED IN WHOLE OR IN PART BY THE ASSOCIATION'S FAILURE TO DISCHARGE ITS RESPONSIBILITIES UNDER THIS *SECTION 9.3*. NO DIMINUTION OR ABATEMENT OF ASSESSMENTS SHALL BE CLAIMED OR ALLOWED BY REASON OF ANY ALLEGED FAILURE OF THE ASSOCIATION TO TAKE SOME ACTION OR PERFORM SOME FUNCTION REQUIRED TO BE TAKEN OR PERFORMED BY THE ASSOCIATION UNDER THIS DECLARATION OR FOR INCONVENIENCE OR DISCOMFORT ARISING FROM THE MAKING OF REPAIRS OR IMPROVEMENTS WHICH ARE THE RESPONSIBILITY OF THE ASSOCIATION OR FROM ANY ACTION TAKEN BY THE ASSOCIATION TO COMPLY WITH APPLICABLE LAW.

9.4. Inspection Obligations

9 4.1 Contract for Services In addition to the Association's maintenance obligations set forth in this Declaration, the Association shall, at all times, contract with or otherwise retain the services of independent, qualified, individuals or entities to

provide the Association with inspection services relative to the maintenance, repair and physical condition of the General Common Elements.

9 4 2. Schedule of Inspections. Inspections will take place in accordance with prudent business practices A Guide to Association's Examination of Common Elements is attached to this Declaration as Attachment 5 The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

9 4 3 Notice to Declarant During the Development Period, the Association shall, if requested by Declarant, deliver to Declarant ten (10) days advance written notice of all such inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors

9 4.4. Limitation The provisions of this *Section 9.4* shall not apply during the Declarant Control Period unless otherwise directed by the Declarant

9.5. Owner Responsibility. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property

(i) To maintain, repair, and replace such Owner's Unit and all Improvements constructed therein or thereon, and any Limited Common Elements assigned exclusively to such Owner's Unit unless such maintenance is provided by the Association pursuant to this Declaration

(ii) To maintain the yard space and landscaped areas within an Owner's Unit, keeping the same in a neat, clean, odorless, orderly, and attractive condition.

(iii) To maintain, repair, and replace all portions of the Property for which the Owner is responsible under this Declaration or by agreement with the Association.

(iv) To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto

(v) To be responsible for the Owner's willful or negligent acts and those of the Owner or Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

9.6. Party Walls.

9 6 1 General Rules of Law to Apply Each fence or wall built as part of the original construction of a Building which serves and separates any two (2) adjoining Units shall constitute a party wall (a "**Party Wall**"). To the extent not inconsistent with the provisions of this *Section 9.6*, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any Party Wall other than non-structural alterations to the interior surfaces of such walls (i e., the surfaces of such walls facing the interior of a Building); provided, however, that under no circumstance or event will an Owner install or attach in or on a Party Wall any speaker, alarm, or any other device, item, component, or system designated for the creation or emission of loud, disturbing, or objectionable noises, as determined by the Board Without limitation on the foregoing, to the extent that the actions of an Owner result in damage to a Party Wall, the Owner responsible for such damage is obligated to restore and pay any and all costs associated with restoring the Party Wall to its pre-damage condition.

9.6.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who the wall serves in equal proportions.

9 6 3 Damage and Destruction. If a Party Wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who the Party Wall serves may restore it, and the other Owner or Owners that the wall serves shall thereafter contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions

9 6 4. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this *Section 9.6* shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

9 6 5 Roofs, Foundation, Fences Common or shared roofs, foundations and fences will be dealt with in the same manner as Party Walls, as set forth in this *Section 9 6.*

9.6 6 Dispute Resolution. In the event of any dispute arising concerning a Party Wall, or under the provisions of this *Section 9 6* (the "**Dispute**"), the parties shall submit the Dispute to mediation. Should the parties be unable to agree on a mediator within ten (10) days after written request therefore by the Board, the Board shall appoint a mediator. If the Dispute is not resolved by mediation, the Dispute shall be resolved by binding arbitration Either party may initiate the arbitration. Should the parties be unable to agree on an arbitrator within ten (10) days after written request therefore by the Board, the Board shall appoint an arbitrator. The decision of the arbitrator shall be binding upon the parties and shall be in lieu of any right of legal action that either party may have against the other In the event an Owner fails to properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) implement the decision of the mediator or arbitrator, as applicable, the Board may implement said mediator's or arbitrator's decision, as applicable If the Board implements the mediator's or arbitrator's decision on behalf of an Owner, the Owner otherwise responsible therefor will be personally liable to the Association for the costs and expenses incurred by the Association in conjunction therewith. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Unit(s) Any such amounts assessed and chargeable against a Unit hereunder will be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Unit(s)

9.7. Disputes. If a dispute arises regarding the allocation of maintenance responsibilities by the Documents, the dispute will be resolved by the Board Unit maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility It is the intent of this *Article 9* that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners

9.8. Warranty Claims. If the Owner is the beneficiary of a warranty against defects to the Common Elements, the Owner irrevocably appoints the Association, acting through the Board, as the Owner's attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to Common Elements

9.9. Owner's Default In Maintenance. If the Board determines that an Owner has failed to properly discharge such Owner's obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at the Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform

the maintenance, the Association may do so at the Owner's expense, which is an Individual Assessment against the Owner and such Owner's Unit In case of an emergency, however, the Board's responsibility to give the Owner written notice is waived, and the Board may take any action it deems necessary to protect persons or property, the cost of such action being at the Owner's expense and being levied as an Individual Assessment

ARTICLE 10
ARCHITECTURAL COVENANTS AND CONTROL

PURSUANT TO THIS DECLARATION, ALL "IMPROVEMENTS", AS SUCH TERM IS DEFINED HEREIN, MUST BE APPROVED IN ADVANCE AND IN WRITING BY THE ARCHITECTURAL REVIEWER

10.1. Purpose. Because the Units are part of a single, unified community, the Architectural Reviewer has the right to regulate the appearance of all Improvements in order to preserve and enhance the Property's value and architectural harmony. The Architectural Reviewer has the right to regulate every aspect of proposed or existing Improvements on the Property, including replacements or modifications of original construction or installation During the Development Period, the primary purpose of this *Article* is to reserve and preserve Declarant's right of architectural control Notwithstanding anything to the contrary stated herein, Improvements constructed on the Property and all architectural modifications made thereto that are made by the Declarant or its permittees shall not be subject to approval pursuant to this *Article*.

10.2. Architectural Reviewer. Until expiration or termination of the Development Period, the Architectural Reviewer shall mean Declarant or its designee. Upon expiration of the Development Period, the rights of the Architectural Reviewer under this Declaration will automatically terminate.

10.3. Architectural Control by Declarant

10 3 1 Declarant as Architectural Reviewer During the Development Period, the Architectural Reviewer shall mean Declarant or its designee, and neither the Association or the Board, nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the review and approval of any Improvements. Declarant may designate one or more Persons from time to time to act on its behalf as Architectural Reviewer in reviewing and responding to applications pursuant to this *Article 10*

10.3.2. Declarant's Rights Reserved Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that during the Development Period, no Improvements will be started or progressed without the prior written approval of the Architectural Reviewer,

which approval may be granted or withheld at the Architectural Reviewer's sole discretion. In reviewing and acting on an application for approval, the Architectural Reviewer may act solely in its self-interest and owes no duty to any other Person or any organization.

10.3.3. Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its rights as Architectural Reviewer to the Board or a committee appointed by the Board comprised of Persons who may or may not be members of the Association Any such delegation must be in writing and must specify the scope of delegated responsibilities Any such delegation is at all times subject to the unilateral right of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (ii) veto any decision which Declarant, in its sole discretion, determines to be inappropriate or inadvisable for any reason.

10.4. Limits on Liability. Neither the Declarant, AG, the Board, nor their directors, officers, committee members, employees or agents will have any liability for decisions made as the Architectural Reviewer in good faith. Neither the Declarant, AG, the Board, nor their directors, officers, committee members, employees or agents are responsible for: (i) errors in or omissions from the plans and specifications submitted to the Architectural Reviewer; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws. Approval of a modification or Improvement may not be deemed to constitute a waiver of the right to withhold approval of similar proposals, plans or specifications that are subsequently submitted

10.5. Prohibition of Construction, Alteration and Improvement Without the Architectural Reviewer's prior written approval, no Person may commence or continue any construction, alteration, addition, Improvement, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement, provided that such action is not visible from any other portion of the Property

YOU CANNOT CHANGE THE EXTERIOR OF ANY IMPROVEMENTS WITHIN YOUR UNIT UNLESS YOU HAVE THE SIGNED CONSENT OF THE ARCHITECTURAL REVIEWER.

10.6. No Deemed or Verbal Approval. Approval by the Architectural Reviewer may not be deemed, construed, or implied from an action, a lack of action, or a verbal statement by the Declarant, Declarant's representative or designee or the Association, an Association director or officer, a member or chair of the Declarant or Board-appointed committee, the Association's

manager, or any other representative of the Association To be valid, approval of the Architectural Reviewer must be. (i) in writing, (ii) on a form or letterhead issued by the Architectural Reviewer, (iii) signed and dated by a duly authorized representative of the Architectural Reviewer, designated for that purpose; (iv) specific to a Unit, and (v) accompanied by detailed plans and specifications showing the proposed change If the Architectural Reviewer fails to respond in writing – negatively, affirmatively, or requesting information – within sixty (60) days after the Architectural Reviewer's actual receipt of the Owner's application, **the application is deemed denied**. **Under no circumstance may approval of the Architectural Reviewer be deemed, implied or presumed**. If the Architectural Reviewer approves a change, the Owner or the Architectural Reviewer may require that the architectural approval be Recorded, with the cost of Recordation borne by the Owner. Architectural Reviewer approval of an architectural change automatically terminates if work on the approved Improvement has not started by the commencement date stated in the Architectural Reviewer's approval and thereafter diligently prosecuted to completion, or, if no commencement date is stated, within ninety (90) days after the date of Architectural Reviewer approval

10.7. Application. To request Architectural Reviewer approval, an Owner must make written application and submit two (2) identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought If the application is for work that requires a building permit from a municipality or other regulatory authority, the Owner must obtain such permit and provide a copy to the Architectural Reviewer in conjunction with the application. The Architectural Reviewer may return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "Submit Additional Information." The Architectural Reviewer has the right, but not the duty, to evaluate every aspect of construction and property use that may alter or adversely affect the general value of appearance of the Property

10.8. Owner's Duties. If the Architectural Reviewer approves an Owner's application, the Owner may proceed with the Improvement, provided:

(i) The Owner must adhere strictly to the plans and specifications which accompanied the application

(ii) The Owner must initiate, diligently prosecute, and complete the Improvement in a timely manner

(iii) If the approved application is for work that requires a building permit from a municipality of other regulatory authority, the Owner must obtain the appropriate permit The Architectural Reviewer's approval of plans and specifications does not mean that such plans and specifications comply with a municipality or other regulatory authority requirements

Alternatively, approval by a municipality or other regulatory authority does not ensure Architectural Reviewer approval

ARTICLE 11
CONSTRUCTION & USE RESTRICTIONS

11.1. Variance. The Property is subject to the restrictions contained in the Documents. The Declarant, with the consent of AG so long as AG owns any Unit or portion of the Property, may grant a variance or waiver of a restriction during the Development Period The Board, with the Declarant's written consent (and AG's written consent so long as AG owns any Unit or portion of the Property) during the Development Period, may grant a variance or waiver of a restriction on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing and executed by the Declarant, AG, if required by the foregoing sentences, and/or a Majority of the Board, as applicable The grant of a variance shall not constitute a waiver or estoppel of the right to deny a variance in other circumstances

11.2. Declarant Privileges. In connection with the development and marketing of Units, Declarant has reserved a number of rights and privileges that are not available to other Owners or Residents Declarant's exercise of a right or privilege that appears to violate the Documents does not constitute waiver or abandonment of applicable provision of the Documents

11.3. Association's Right to Promulgate Rules and Amend Community Manual The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. The Association, acting through a Majority of the Board, is further granted the right to amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines to be in the best interest of the Association, in its sole and absolute discretion.

11.4. Rules and Regulations In addition to the restrictions contained in this *Article 11*, each Unit is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

(i) Use of Common Elements

(ii) Hazardous, illegal, or annoying materials or activities on the Property

(iii) The use of Property-wide services provided through the Association

(iv) The consumption of utilities billed to the Association

(v) The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units

(vi) The occupancy and leasing of Units.

(vii) Animals

(viii) Vehicles.

(ix) Disposition of trash and control of vermin, termites, and pests.

(x) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Residents.

During the Development Period, all Rules must be approved in advance and in writing by the Declarant and AG, so long as AG owns any Unit or portion of the Property.

11.5. Use of Common Elements There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without the prior written consent of Declarant (during the Development Period) and the Board thereafter, except as specifically provided herein

11.6. Single-Family Residential Use. The Property shall be used solely for private single family residential purposes

No professional, business, or commercial activity to which the general public is invited shall be conducted on any portion of the Property, except an Owner or Resident may conduct business activities within a residence so long as· (i) such activity complies with all Applicable Law, (ii) the business activity is conducted without the employment of persons other than the residents of the Building constructed on the Unit, (iii) the existence or operation of the business activity is not apparent or detectable by sight, i e., no sign may be erected advertising the business within the Property, sound, or smell from outside the residence, (iv) the business activity does not involve door-to-door solicitation of residents within the Property; (v) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted, (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property as may be determined in the sole discretion of the Board, and (vii) the business does not require the installation of any machinery other than that customary to normal household operations In addition, for the purpose of obtaining any business or commercial license, neither the Building nor Unit will be considered open to the public The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall

include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (x) such activity is engaged in full or part-time, (y) such activity is intended to or does generate a profit, or (z) a license is required

Leasing of a residence in compliance with *Section 11.7* shall not be considered a business or trade within the meaning of this subsection This subsection shall not apply to any activity conducted by Declarant

Notwithstanding any provision in this Declaration to the contrary, until the expiration or termination of the Development Period

(i) Declarant and/or its assignees may construct and maintain upon portions of the Common Element, the Special Common Element, any Unit, or any portion of the Property owned by Declarant, such facilities and may conduct such activities, which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single family residences or other Improvements constructed upon the Units, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its assignees shall have an easement over and across the Common Element and Special Common Element for access and use of such facilities at no charge, and

(ii) Declarant and/or its assignees will have an access easement over and across the Common Element for the purpose of making, constructing and installing Improvements upon the Common Element and Special Common Element.

11.7. Rentals Nothing in this Declaration shall prevent the rental of any Unit and the Improvements thereon by the Owner thereof for residential purposes, provided that all rentals must be for terms of at least six (6) months. All leases shall be in writing The Owner must provide to its lessee copies of the Documents and shall notify its lessee of any changes or additions thereto. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease.

11.8. Hazardous Activities No activities may be conducted on or within the Property and no Improvements may be constructed on or within any portion of the Property which, in the opinion of the Board, are or might be unsafe or hazardous to any person or property Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Property unless discharged in conjunction with an event approved in advance by the Board and no open fires may be lighted or permitted except within safe and

well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies

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

11.10. Mining and Drilling No portion of the Property may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property by Declarant Furthermore, this provision will not be interpreted to prevent the drilling of water wells by Declarant or otherwise approved in advance by the Architectural Reviewer which are required to provide water to all or any portion of the Property. All water wells must also be approved in advance by the Architectural Reviewer and any applicable regulatory authority No representation or warranty, express or implied, is made as to the ownership of the minerals, resources and groundwater or any portion thereof or any interest therein

11.11. Noise No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its Residents This *Section 11 11* shall not be construed to include noise caused by construction activities by Declarant

11.12. Animals – Household Pets No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such as pot-bellied pigs, miniature horses, chickens, exotic snakes or lizards, ferrets, monkeys, or other exotic animals) The Board may determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words No Owner or Resident may keep on a Unit more than three (3) cats and dogs, in the aggregate. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Building, or the fenced yard space associated therewith, unless confined to a leash. The Association may restrict pets to certain areas on the Property No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within

enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet All pets must be registered, licensed and inoculated as required by Applicable Law. If the Board determines, in its sole discretion, that a pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner or Resident, upon written notice, may be required to remove the pet from the Property.

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

11.14. Trash Containers. Unless it is within twelve (12) hours before or after the designated trash and recycling pickup time, trash containers and recycling bins must be stored inside the garage of the Building constructed on the Unit or in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Unit. The Board shall have the right to specify additional locations on each Owner's Unit in which trash containers or recycling bins must be stored

11.15. Antennas Except as expressly provided below, no exterior radio or television antennas, or aerial or satellite dish or disc shall be erected, maintained or placed on a Unit without the prior written approval of the Architectural Reviewer, provided, however, that

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

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

(iii) an antenna that is designed to receive television or radio broadcast signals,

(collectively, (i) through (iii) are referred to herein as the "Permitted Antennas") will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the Architectural Reviewer, consistent with Applicable Law, in order to

minimize obtrusiveness as viewed from streets and adjacent property Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Property.

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

(i) Attached to the back of the principal Building constructed on the Unit, with no part of the Permitted Antenna any higher than the roof fascia, soffit, or bargeboard and screened from view of adjacent Units and the street; then

(ii) Attached to the side of the principal Building constructed on the Unit, with no part of the Permitted Antenna any higher than the roof fascia, soffit, or bargeboard and screened from view of adjacent Units and the street

The Architectural Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

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

11.17. Signs Unless otherwise prohibited by Applicable Law, no sign of any kind may be displayed to the public view on any Unit without the prior written approval of the Architectural Reviewer, except for·

(i) signs which are expressly permitted pursuant to the Rules,

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

(iii) a maximum of two (2) school or youth affiliated signs shall be permitted, provided the sign(s)· (a) is located in the landscaping bed of the front

yard and blends in with the existing landscaping; (b) is no larger than 36" x 42" and does not exceed five feet (5') in height above natural ground, (c) is constructed of wood, plastic or metal and are not flags or banners, as determined in the sole and absolute discretion of the Board; (d) is kept in good condition and repair, as determined in the sole and absolute discretion of the Board, (e) does not cause embarrassment, discomfort and/or annoyance to other Owners, as determined in the sole and absolute discretion of the Board; and (f) does not contain any telephone numbers or commercial advertisement,

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

(v) in accordance with Tenn. Code Ann § 2-7-143, candidate or measure signs may be erected provided the sign (a) is erected no earlier than the sixtieth (60th) day before the date of the election to which the sign relates, (b) is removed no later than one (1) day after the date of the election to which the sign relates; and (c) is ground-mounted. Only one sign may be erected for each candidate or measure No sign may be larger than four (4) square feet ,

(vi) permits as may be required by legal proceedings,

(vii) permits as may be required by any governmental entity; and

(viii) one "no soliciting" or "security warning" sign near or on the front door of the Building, provided that the sign may not exceed twenty-five (25) square inches.

For Lease and For Rent signs are expressly prohibited.

11.18. Flags – Approval Requirements An Owner is permitted to display the flag of the United States of America, the flag of the State of Tennessee, an official or replica flag of any branch of the United States armed forces, or one (1) flag with official insignia of a college or university ("**Permitted Flag**") and is permitted to install a flagpole no more than five feet (5') in length affixed to the front of a Building near the principal entry or affixed to the rear of a Building ("**Permitted Flagpole**") Only two (2) Permitted Flagpoles are allowed per Building. A Permitted Flag or Permitted Flagpole need not be approved in advance by the Architectural

Reviewer. Approval by the Architectural Reviewer is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Unit ("**Freestanding Flagpole**")

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

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

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

(iii) Any Permitted Flag displayed on either a Permitted Flagpole or a Freestanding Flagpole may not be more than three feet in height by five feet in width (3'x5'),

(iv) The flag of the United States of America must be displayed in accordance with 4 U S.C Sections 5-10 and the flag of the State of Tennessee must be displayed in accordance with Tenn. Code Ann Section 4-1-406,

(v) The display of a Permitted Flag, or the location and construction of a Permitted Flagpole or Freestanding Flagpole, must comply with all Applicable Law, easements and setbacks of record,

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

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

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

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

The requirements of this *Section 11 19* shall not apply to any flag or flagpole erected by the Declarant.

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

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

11.22. Outside Storage Buildings No outside storage building shall be placed upon the Property without the prior written approval of the Architectural Reviewer.

11.23. Unsightly Articles, Vehicles No article deemed to be unsightly by the Board will be permitted to remain on any Unit so as to be visible from adjoining property or from public or private thoroughfares Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any Unit or to be parked on any roadway within the Property

11.24. Parking All Owners and Residents are encouraged to park vehicles in the garage on their Unit and use the driveways on their Unit as overflow parking. On street parking is limited to guests and visitors. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard No vehicle may be parked in a manner that obstructs or otherwise blocks ingress and egress to any part of the Property by an emergency vehicle The parking of vehicles in the yard of any Unit is not permitted

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

11.26. Basketball Goals; Permanent and Portable No permanent or portable basketball goals shall be permitted on the Property without the prior written approval of the Architectural Reviewer

11.27. Playscapes and Sports Courts Playscapes are permissible at the sole discretion of the Architectural Reviewer If allowed, these facilities must be properly sited and screened so as to minimize the visual and audio impact of the facility on adjacent properties No sport courts shall be permitted on the Property without the prior written approval of the Architectural Reviewer.

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

11.29. Exterior Window Air Conditioning Units. No exterior window air conditioning units are permitted on any Unit without the advance written approval of the Architectural Reviewer

11.30. Window Treatments An Owner may install window treatments inside the Building constructed on his or her Unit, provided that the window treatments, including drapes, blinds, shades or shutters, must appear to be (i) clear, (ii) white, (iii) near-white light neutral; or (iv) light wood tone when viewed from adjacent property The use of newspaper,

bed sheets, tablecloths, or other obviously non-drapery fabrics, aluminum foil, and reflective materials as window treatments are expressly prohibited

11.31. Fences; Sidewalks. All fences and walls shall comply with all Applicable Law Unless otherwise approved by the Architectural Reviewer, no fence, wall or hedge will be erected or maintained on any Unit nearer to the street than the front elevation of the residence constructed on the Unit, except for fences erected in conjunction with the model homes or sales offices The Architectural Reviewer will have the sole discretion to determine the front elevation of the residence for the purpose of this *Section 11 31* Fences shall be either: (i) four feet (4') in height and constructed of black wrought iron in an open picket style, or (ii) six feet (6') in height constructed of white vinyl. No chain-link, metal, cloth or agricultural fences may be installed or maintained on a Unit, except by Declarant Each Owner must maintain all fences on such Owner's Unit in good condition, including but not limited to periodically re-staining all fences on such Owner's Unit using stain substantially similar to the stain applied to the fences as originally constructed by Declarant, as determined by the Architectural Reviewer Any broken pickets, fallen or leaning panels, or columns must be repaired or replaced in a manner that matches the fence or wall as originally installed by the Declarant

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

11.33. Garages All garages shall be maintained for the parking of automobiles and may not be used for storage or other purposes which preclude its use for the parking of automobiles No garage may be permanently enclosed or otherwise used for habitation.

11.34. Solar Energy Device. Solar Energy Devices may be installed with the advance written approval of the Architectural Reviewer in accordance with the procedures and requirements set forth below:

11 34.1 Application To obtain Architectural Reviewer approval of a Solar Energy Device, the Owner shall provide the Architectural Reviewer with the following information. (i) the proposed installation location of the Solar Energy Device, and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**") A Solar Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application The Solar Application shall be submitted in accordance with the provisions of *Article 10* of this Declaration

11 34 2.Approval Process The Architectural Reviewer will review the Solar Application in accordance with the terms and provisions of *Article 10* of this Declaration. The Architectural Reviewer will approve a Solar Energy Device if the Solar Application complies with *Section 11 34 3* below UNLESS the Architectural Reviewer makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 11 34 3*, will create a condition that substantially interferes with the use and enjoyment of property within the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The Architectural Reviewer's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Units immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on Common Element or Special Common Element or property owned or maintained by the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 11 34.2* when considering any such request

11.34.3.Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Reviewer, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following.

(i) The Solar Energy Device must be located on the roof of the Building located on the Owner's Unit, entirely within a fenced area of the Owner's Unit, or entirely within a fenced patio located on the Owner's Unit If the Solar Energy Device will be located on the roof of the Building, the Architectural Reviewer may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) above the energy production of the Solar Energy Device if installed in the location designated by the Architectural Reviewer. If the Owner desires to contest the alternate location proposed by the Architectural Reviewer, the Owner should submit information to the Architectural Reviewer which demonstrates that the Owner's proposed location meets the foregoing criteria If the Solar Energy Device will be located in the fenced area of the Owner's Unit or patio, no portion of the Solar Energy Device may extend above the fence line.

(ii) If the Solar Energy Device is mounted on the roof of the Building located on the Owner's Unit, then. (A) the Solar Energy Device may not extend higher than or beyond the roofline; (B) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline, (C) the frame, support brackets, or visible

piping or wiring associated with the Solar Energy Device must be silver, bronze or black

11.35. Model Homes. Declarant may construct, or the Architectural Reviewer may approve, a model home constructed on a Unit with exterior finishes, fencing and other components that do not conform to the requirements imposed on other single-family residences within the Property Declarant's construction, or approval by the Architectural Reviewer, of a model home which differs from the requirements imposed on other single-family residences within the Property shall in no event constitute a waiver of the terms and provisions of the Documents

11.36. Compliance with the Documents. Each Owner, their family, Residents of a Unit, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Documents, as they may be amended from time to time. Failure to comply with any of the Documents shall constitute a violation of the Documents and may result in a fine against the Owner in accordance with *Section 13.2* of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by Declarant, the Board on behalf of the Association, or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Documents, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) shall be assessed against and chargeable to the Owner's Unit(s). Any such amounts assessed and chargeable against a Unit shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Unit(s) **Each such Owner shall release and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this *Section 11.36* (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.**

11.37. No Warranty of Enforceability. Declarant and AG make no warranty or representation as to the present or future validity or enforceability of the Documents. Any Owner acquiring a Unit in reliance on one or more of the Documents shall assume all risks of

the validity and enforceability thereof and, by acquiring the Unit, agrees to hold Declarant and AG harmless therefrom

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

ARTICLE 12
ASSOCIATION OPERATIONS

12.1. Board Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through a Majority of the Board."

12.2. Association. The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a horizontal property regime association and a nonprofit corporation organized under the laws of the State of Tennessee. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members and the Regime, subject only to the limitations on the exercise of such powers as stated in the Documents The Association comes into existence on issuance of its corporate charter The Association will continue to exist as long as the Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time

12.3. Name. A name is not the defining feature of the Association. Although the initial name of the Association is Zermatt Residential Community, Inc., the Association may operate under any name that is approved by the Board and. (i) filed with the Davidson County Clerk as an assumed name; or (ii) filed with the Secretary of State of Tennessee as the name of the filing entity The Association may also change its name by amending the Documents, except in the event the corporate charter has been revoked and the name, "Zermatt Residential Community, Inc " is no longer available In such event, the Board will cause a notice to be Recorded stating the current name of the Association Another legal entity with the same name

as the Association, or with a name based on the name of the Property, is not the Association, which derives its authority from this Declaration.

12.4. Duration The Association comes into existence on the earlier to occur of the following two events. (i) the date on which the Charter is filed with the Secretary of State of Tennessee, or (ii) the date on which a Unit deed is Recorded, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates)

12.5. Governance. The Association will be governed by a Board elected by the Members Unless the Bylaws or Charter provide otherwise, the Board will consist of at least three (3) Persons elected at the annual meeting of the Association, or at a special meeting called for such purpose The Association will be administered in accordance with the Documents and Applicable Law Unless the Documents provide otherwise, any action requiring approval of the Members may be approved in writing by Owners representing at least a Majority of the total number of votes in the Association, or at a meeting by Owners' representing at least a Majority of the total number of votes in the Association.

12.6. Merger. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration The amendment must be approved by Owners holding at least two-thirds (2/3) of the total number of votes in the Association On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of Applicable Law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger The surviving or consolidated association may administer the provisions of the Documents, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration.

12.7. Membership. Each Owner is a Member of the Association, ownership of a Unit being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Unit The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at a meeting of the Association. If a Unit is owned by more than one Person, each co-Owner is a Member of the Association and may exercise the membership rights appurtenant to the Unit

12.8. Manager. The Board may delegate the performance of certain functions to one or more managers or managing agents of the Association To assist the Board in determining whether to delegate a function, a Guide to Association's Major Management & Governance Functions is attached to this Declaration as Attachment 6 The Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Guide, however, may not be construed to create legal duties for the Association and its board members, officers, employees, and agents. Rather, the Guide is intended as a tool or an initial checklist for the Board to use periodically when considering a

delegation of its functions. As a list of functions that owners associations commonly delegate to a manager, the Guide should not be considered as a complete list of the Board's duties, responsibilities, or functions Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association

12.9. Books and Records The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of Applicable Law.

12.10. Indemnification. The Association indemnifies every officer, director, and committee member (for purposes of this *Section 12.10*, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with any threatened or pending action, suit, or proceeding to which the Leader is a party or respondent by reason of being or having been a Leader A Leader is not liable for a mistake of judgment A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. As a Common Expense, the Association may maintain general liability and directors' and officers' liability insurance to fund this obligation

12.11. Obligations of Owners Without limiting the obligations of Owners under the Documents, each Owner has the following obligations.

12 11.1.Information. Within thirty (30) days after acquiring an interest in a Unit, within thirty (30) days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information· (i) a copy of the Recorded deed by which Owner has acquired title to the Unit, (ii) the Owner's address and phone number; (iii) any Mortgagee's name; (iv) the name and phone number of any Resident other than the Owner, and (v) the name, address, and phone number of Owner's managing agent, if any

12.11.2 Pay Assessments Each Owner will pay Assessments properly levied by the Association against the Owner or such Owner's Unit and will pay Regular Assessments without demand by the Association.

12 11.3 Compliance with Documents Each Owner will comply with the Documents as amended from time to time.

12 11 4 Reimburse for Damages. Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a Resident of the Owner's Unit, or the Owner or Resident's family, guests, employees, contractors, agents, or invitees.

12 11 5 Liability for Violations. Each Owner is liable to the Association for violations of the Documents by the Owner, a Resident of the Owner's Unit, or the Owner or Resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

12.12. Unit Resales. This *Section 12 12* applies to every sale or conveyance of a Unit or an interest in a Unit by an Owner other than Declarant and AG

12 12 1.Resale Certificate An Owner intending to sell his Unit will notify the Association and will request a horizontal property resale certificate from the Association

12 12 2.No Right of First Refusal. The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner's Unit to the Association.

12.12.3.Other Transfer-Related Fees A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to, fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against Regular Assessments or Special Assessments Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees are not subject to the Association's assessment lien, and are not payable by the Association This *Section 12.12.3* does not obligate the Board to levy transfer-related fees

12.12.4.Exclusions. The requirements of this *Section 12 12* do not apply to the following transfers (i) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien, (ii) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, or parent, a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust, a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee, or (iv) a disposition by a government or governmental agency. Additionally, the requirements of this *Section 12.12* do not apply to the initial conveyance from Declarant

ARTICLE 13
ENFORCING THE DOCUMENTS

13.1. Notice And Hearing. Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by Applicable Law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine, unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months The Association may also give a copy of the notice to the Resident of the Unit. Pending the hearing, the Association may continue to exercise all rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge The Owner may attend the hearing in person, or may be represented by another person or written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearings, provided they are consistent with Applicable Law.

13.2. Remedies. The remedies provided in this *Article 13* for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by Applicable Law, the Association has the following rights to enforce the Documents.

13.2 1. Nuisance. The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by Applicable Law against a nuisance, either public or private, is applicable against the violation

13.2 2 Fine The Association may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Unit if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Documents Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents

13 2 3 Suspension. The Association may suspend the right of Owners and Residents to use Common Elements (except rights of ingress and egress) for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Documents A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

13.2.4. Self-Help. The Association has the right to enter a Common Element or Unit to abate or remove, using force as may reasonably be necessary, any Improvement, thing, animal, person, vehicle, or condition that violates the Documents In exercising this right, the Association is not trespassing and is not liable for damages related to the

abatement The Board may levy its costs of abatement against the Unit and Owner as an Individual Assessment Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help Notwithstanding the foregoing, the Association may not alter or demolish any Improvement within a Unit without judicial proceedings.

13 2 5 Suit Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation

13.3. Board Discretion The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances· (i) the Association's position is not sufficiently strong to justify taking any or further action, (ii) the provision being enforced is or may be construed as inconsistent with Applicable Law, (iii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable Person or to justify expending the Association's resources, or (iv) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria

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

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

13.6. Release Subject to the Association's obligations under this Declaration, except as otherwise provided by the Documents, each Owner hereby releases, acquits and forever discharges the Association, and its affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns and agrees to hold such Persons harmless of and from any and all claims, damages, liabilities, costs and/or expenses (including reasonable attorneys' fees) relating to the construction of, repair or restoration of, or the sale to the Owners of the Units, or the Common Elements This release shall release and forever discharge the Association and its affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors,

contractors, consultants, insurers, sureties and assigns, from all claims and causes of action, whether statutory or under the common law, known or unknown, now accrued, or that arise in the future

13.7. Right of Action by Association. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Unit Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 19.1.1* below, relating to the design or construction of a Unit (whether one or more) This *Section 13.7* may not be amended or modified without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument

13.8. Enforcement Authority of AG. So long as AG owns any Unit or other portion of the Property, AG shall have the right to enforce any of the provisions of this Declaration, the Charter and the Bylaws that are intended to be for the benefit of AG Notwithstanding anything contained in this Declaration, Declarant, AG and their respective agents, representatives or employees, shall not be obligated to undertake any affirmative action to enforce the provisions of this Declaration, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof.

ARTICLE 14
INSURANCE

14.1. Association's Responsibility for Property Insurance. The Association will comply with the following insurance requirements.

(i) The Association will obtain property insurance on the Buildings insuring against all risks of physical loss commonly insured against, including fire and extended coverage, in a total amount of at least one hundred percent (100%) of the replacement costs. Such coverage will include the interior undecorated surfaces of walls, floors and ceilings, including rough plumbing, rough electrical, water barrier and HVAC ducts, **but excluding final plumbing, final air conditioning, final electrical, wall coverings, floor coverings, appliances, cabinets or fixtures and other interior buildout items originally installed by the Declarant, and will also exclude any Improvements or upgrades (including wall coverings and fixtures) installed by an Owner (other than Declarant). Such coverage will also exclude furnishings and other personal property within the Dwelling** Notwithstanding the foregoing, at any point in the future, the Board may elect to obtain a property insurance policy that covers Improvements or betterments (including wall coverings and fixtures) made by Persons other than those made by the Declarant In the event that the Board obtains a property insurance policy that covers Improvements or betterments made by Persons other than those made by Declarant, the Board will

notify the Owners Each Owner is advised to periodically consult with the Association to determine the amount of property insurance that the Association has obtained in order to determine the additional amount of insurance needed by each Owner. The Association shall consider reasonable requests for such additional amount of insurance but has no duty to provide it The costs incurred by the Association pursuant to this *Section 14 1(i)* will be assessed uniformly against all Units in the Regime as an Individual Assessment

(ii) Insurance policies carried pursuant to this *Section 14 1*, and to the extent available, must also provide that

a) Each Owner is an insured person under the policy with respect to liability arising out of the person's membership in the Association,

b) The insurer waives its right to subrogation under the policy against an Owner,

c) No action or omission of an Owner, unless within the scope of the Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy, and

d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy provides primary insurance.

(iii) A claim for any loss covered by the insurance required by *Section 14.1(i)* of this Declaration must be submitted by and adjusted with the Association. Each Owner irrevocably appoints the Association, acting through its Board, as his or her trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. The Association will hold insurance proceeds in trust for the Owners and lienholders as their interests may appear Subject to *Section 14 1(vii)* of this Declaration, the proceeds paid under a policy must be disbursed first for the repair or restoration of the damaged Buildings, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored.

(iv) An insurance policy issued to the Association does not prevent an Owner from obtaining insurance for the Owner's own benefit.

(v) The insurer issuing the policy may not cancel or refuse to renew it less than thirty (30) business days after written notice of the proposed cancellation or nonrenewal has been mailed to the Association, except in the case of non-payment of premium, in which case the policy may be canceled within (10) business days after the notice of cancellation has been issued.

(vi) Except as provided by this *Section 14.1(vi)*, any portion of a Building for which insurance is required to be obtained by the Association that is damaged or destroyed will be promptly repaired or replaced by the Association unless replacement would be illegal under any Applicable Law. The cost of repair or replacement in excess of the insurance proceeds will be levied as an Individual Assessment against the Owner of such Lot to pay the excess costs or expenses. Any insurance proceeds attributable to a damaged Building will be used to restore the damaged Building to a condition compatible with the remainder of the Buildings If a Building is not repaired or replaced, the insurance proceeds attributable to a Building that is not rebuilt will be distributed to the Owners of the Units located therein, or to their mortgagees, as their interests may appear

(vii) Even if the Association and the Owners have adequate amounts of recommended and required coverage, all or a portion of the Property may experience a loss that is not covered by insurance. In such event that a loss is not covered by insurance, the Owner is responsible for restoring the Owner's Unit.

(viii) The Association, the Board, and the Association's officers and managers, will not be liable for failure to obtain any coverage required by this *Article 14* or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at demonstrably unreasonable cost.

14.2. Owner's Responsibility for Insurance

14 2 1 Insurance Owners are Encouraged to Obtain The Owner of a Unit is encouraged to procure property insurance covering those areas in a Unit not covered by the property insurance procured by the Association, such as the yard area, and the interior of the Unit, including replacement of interior improvements and betterment coverage to insure improvements the Owner may make to the Unit, commonly referred to as HO-6 insurance or its equivalent (commonly referred to as "walls in" or "studs in" insurance). **As set forth in *Section 14.1*, insurance obtained by the Association excludes final plumbing, final air conditioning, final electrical, wall coverings, floor coverings, appliances, cabinets, or fixtures originally installed by the Declarant, and will also exclude any Improvements or upgrades (including wall coverings and fixtures)**

installed by an Owner. Such coverage will also exclude furnishings and other personal property within the Unit. The Owner of a Unit is also encouraged to obtain Loss Assessment Endorsement coverage, as well as personal liability insurance Notwithstanding the foregoing, the Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners

14 2 2. Association Does Not Insure NOTWITHSTANDING THE FOREGOING, THE OWNER, BY ACCEPTING A DEED TO THEIR UNIT, SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION SHALL NOT BE RESPONSIBLE FOR OBTAINING ANY INSURANCE NOT OTHERWISE REQUIRED BY THE ASSOCIATION TO BE OBTAINED UNDER THIS ARTICLE, including but not limited to general liability insurance on behalf of the Owner or any specialty insurance (including but not limited to tenant's insurance, guest medical insurance, or flooding insurance). The Association does not insure an Owner or Resident's personal property Each Owner and Resident is solely responsible for insuring his or her personal property in his or her Unit, including furnishings, vehicles, and stored items. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND RESIDENT PURCHASE AND MAINTAIN INSURANCE NOT COVERED BY THE ASSOCIATION'S INSURANCE.

14.3. Liability Insurance. The Association will maintain a commercial general liability insurance policy over the Common Elements – expressly excluding the liability of each Owner and Resident within their Unit – for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Elements. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners

14.4. Worker's Compensation. The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of Applicable Law or if the Board so chooses

14.5. Fidelity Coverage. The Association may maintain blanket fidelity coverage for any Person who handles or is responsible for funds held or administered by the Association, whether or not the Person is paid for his services The policy should be for an amount that exceeds the greater of· (i) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (ii) an amount equal to three (3) months of Regular Assessments on all Units. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverages.

14.6. Directors and Officers Liability. The Association may maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance

the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities

14.7. Other Policies. The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association.

ARTICLE 15
RECONSTRUCTION OR REPAIR AFTER LOSS

15.1. Subject To Act The Association's response to damage or destruction of the Property will be governed by Section 66-27-118 of the Act The following provisions apply to the extent the Act is silent

15.2. Restoration Funds. For purposes of this *Article 15*, "**Restoration Funds**" include insurance proceeds, condemnation awards, Deficiency Assessments, Individual Assessments, and other funds received on account of or arising out of injury or damage to the Common Elements. All funds paid to the Association for purposes of repair or restoration will be deposited in a financial institution in which accounts are insured by a federal agency Withdrawal of Restoration Funds requires the signatures of at least two (2) Board members.

15 2 1. Sufficient Proceeds. If Restoration Funds obtained from insurance proceeds or condemnation awards are sufficient to repair or restore the damaged or destroyed Common Elements, the Association, as trustee for the Owners, will promptly apply the funds to the repair or restoration.

15 2.2. Insufficient Proceeds If Restoration Funds are not sufficient to pay the estimated or actual costs of restoration as determined by the Board, the Board may levy a Deficiency Assessment against the Owners to fund the difference

15 2 3. Surplus Funds If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows. If Deficiency Assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them, provided that no Owner may receive a sum greater than that actually contributed by him, and further provided that any Delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus. Any surplus remaining after the disbursement described in the foregoing paragraph will be common funds of the Association to be used as directed by the Board.

15.3. Costs and Plans.

15.3.1. Cost Estimates. Promptly after the loss, the Board will obtain reliable and detailed estimates of the cost of restoring the damaged Common Elements Costs may

include premiums for bonds and fees for the services of professionals, as the Board deems necessary, to assist in estimating and supervising the repair

15.3.2. Plans and Specifications Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction

15.4. Owner's Duty to Repair. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of the Owner's Unit, subject to the right of the Association to supervise, approve, or disapprove repair or restoration during the course thereof Unless otherwise approved by the Architectural Reviewer, the residence must be repaired and restored substantially in accordance with original construction plans and specifications.

15.5. Owner's Liability For Insurance Deductible. If repair or restoration of Common Elements is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance

ARTICLE 16
TERMINATION AND CONDEMNATION

16.1. Association As Trustee. Each Owner hereby irrevocably appoints the Association, acting through the Board, as trustee to deal with the Property in the event of damage, destruction, obsolescence, condemnation, or termination of all or any part of the Property. As trustee, the Association will have full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration and the Act, including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds, to effect the sale of the Property as permitted by this Declaration or by the Act, and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner

16.2. Termination Termination of the terms of this Declaration and the Regime will be governed by *Section 17 4* below.

16.3. Condemnation On behalf of Owners, but without their consent, the Board may execute an amendment of this Declaration to reallocate the Common Interest Allocation following condemnation and to describe the altered parameters of the Regime. If the Association replaces or restores Common Elements taken by condemnation by obtaining other land or constructing additional Improvements, the Board may, to the extent permitted by Applicable Law, execute an amendment without the prior consent of Owners to describe the altered parameters of the Regime and any corresponding change of facilities or Improvements

ARTICLE 17
MORTGAGEE PROTECTION

17.1. Introduction This *Article* is supplemental to, not a substitution for, any other provision of the Documents In case of conflict, this *Article* controls. A provision of the Documents requiring the approval of a specified percentage of Mortgagees will be based on the number of Units subject to mortgages held by Mortgagees. For example, "51 percent of Mortgagees" means Mortgagees of fifty-one percent (51%) of the Units that are subject to mortgages.

17.2. Notice to Mortgagee. As provided in this *Article 17*, the Association is required to provide each Mortgagee with written notice upon the occurrence of certain actions as described in *Section 17 8*, or to obtain the approval of Mortgagees in the event of certain amendments to this Declaration as described in *Section 17.9* or the termination of this Declaration as described in *Section 17 4* To enable the Association to provide the notices and obtain such approval, each Owner must provide to the Association the complete name and address of such Owner's Mortgagee, including the loan number and such additional information concerning the Owner's Mortgagee as the Association may reasonably require. In the event an Owner fails to provide the Association with the information required by this *Section 17.2* after the expiration of thirty (30) days after the Association's written request, the Owner's failure to provide such information will be considered a violation of the terms and provisions of this Declaration.

17.3. Amendment. This *Article 17* establishes certain standards for the benefit of Underwriting Lenders, and is written to comply with their requirements and guidelines in effect at the time of drafting If an Underwriting Lender subsequently changes its requirements, the Board, without approval of Owners or Mortgagees, may amend this *Article 17* and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender.

17.4. Termination In the event of condemnation of the entire Regime, an amendment to terminate may be executed by the Board without a vote of Owners or Mortgagees Any election to terminate this Declaration and the horizontal property regime status of the Regime under circumstances other than condemnation of the entire Regime shall require the consent of: (i) Owners representing at least eighty percent (80%) of the total votes in the Association; (ii) Declarant and AG, so long as AG owns any Unit or other portion of the Property, during the Development Period, and (iii) sixty-seven percent (67%) of Mortgagees.

17.5. Implied Approval The approval of a Mortgagee is implied when the Mortgagee fails to respond within sixty (60) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

17.6. Other Mortgagee Rights

17 6 1 Inspection of Books. The Association will maintain current copies of the Documents and the Association's books, records, and financial statements. Mortgagees may inspect the Documents and records, by appointment, during normal business hours.

17.6.2. Financial Statements. A Mortgagee may have an audited statement prepared at its own expense

17 6.3 Attendance at Meetings A representative of a Mortgagee may attend and address any meeting which an Owner may attend

17.6.4. Right of First Refusal. The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner's Unit to the Association. Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Unit does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien

17.6.5 Management Contract. If professional management of the Association is required by this *Article 17*, the contract for professional management may not require more than ninety (90) days' notice to terminate the contract, nor payment of a termination penalty.

17.7. Insurance Policies If an Underwriting Lender that holds a mortgage on a Unit or desires to finance a Unit has requirements for insurance of horizontal property regimes, the Association must try to obtain and maintain the required coverage, to the extent reasonably available, and must try to comply with any notifications or processes required by the Underwriting Lender. Because underwriting requirements are subject to change, they are not recited here

17.8. Notice of Actions. The Association will send timely written notice to Mortgagees of the following actions:

(i) Any condemnation or casualty loss that affects a material portion of the Regime or the mortgaged Unit.

(ii) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of the mortgaged Unit.

(iii) A lapse, cancellation, or material modification of any insurance policy maintained by the Association

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees

(v) Any proposed amendment of a material nature, as provided in this *Article 17.*

(vi) Any proposed termination of the horizontal property regime status of the Regime

17.9. Amendments of a Material Nature. A Document amendment of a material nature must be approved by Owners representing at least sixty-seven percent (67%) of the total votes in the Association, and by at least fifty-one percent (51%) of Mortgagees **THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS EFFECTED BY THE EXERCISE OF A DEVELOPMENT RIGHT AS PROVIDED IN APPENDIX "A" ATTACHED HERETO** A change to any of the provisions governing the following would be considered material (hereafter a "**Material Amendment**")·

(i) Voting rights.

(ii) Any method of imposing or determining any charges to be levied against individual Unit Owners

(iii) Assessment liens or the priority of Assessment liens

(iv) Reductions in reserves for maintenance, repair, and replacement of Common Elements.

(v) Responsibility for maintenance and repairs.

(vi) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by Declarant pursuant to any rights reserved by Declarant pursuant to Appendix "A" or by agreement between Owners (only those Owners and only the Mortgagees holding mortgages against those Units need approve the action).

(vii) Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property.

(viii) Reduction of insurance requirements

(ix) Imposition of any restrictions on the leasing of Units.

(x) Imposition of any restrictions on Owners' right to sell or transfer their Units.

(xi) Restoration or repair of the Property, in a manner other than that specified in the Declaration, after any damage or partial condemnation.

(xii) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

(xiii) Imposition of a new scheme of regulation or enforcement of exterior maintenance standards, architectural design or exterior appearance of Units other than those specified in the Declaration

ARTICLE 18
AMENDMENTS

18.1. Consents Required As permitted by the Act or by this Declaration, certain amendments to this Declaration may be executed by Declarant acting alone, or by certain Owners acting alone, or by the Board acting alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the total votes in the Association. Notice of any amendment to the Declaration which must be approved by Owners, including but not limited to any amendment pursuant to *Section 20.1*, shall be delivered to each Member in accordance with the Bylaws In the event the Regime is submitted and approved by the Secretary of Veterans Affairs and the Veteran Affairs has guaranteed any loans secured by Units in the Regime, all amendments, including any Material Amendment and any Extraordinary Action (as defined below) made to the Declaration, Bylaws or Charter during the Development Period must be approved by the Secretary of Veterans Affairs or its authorized agent prior to Recording.

In addition, a change to any provision in the Declaration governing the following items (each an "**Extraordinary Action**") must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association:

(i) Merging or consolidating the Association other than with another non-profit entity formed for purposes similar to the Association

(ii) Determining not to require professional management if that management is required by the Declaration or the Association.

(iii) The addition of land to the Declaration if the addition would increase the overall land area then subject to the Declaration by more than ten percent (10%).

(iv) Abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of Common Elements with the exception of: (i) granting easements over and across the Common Elements otherwise permitted by this Declaration or the

Act, (ii) dedicating all or any portion of a Common Element to the extent required by any governing authority or regulatory authority; (iii) adjustments to the boundary line of Common Elements if made in accordance with the provisions of this Declaration; or (iv) transferring Common Elements pursuant to a merger or consolidation with another entity.

(v) Using insurance proceeds for purposes other than construction or repair of the insured improvements.

(vi) Any capital expenditure, other than for the maintenance, operation, repair or replacement of any existing Improvement, if the capital expenditure exceeds more than twenty percent (20%) of the annual operating budget during any period of twelve (12) consecutive months.

18.2. Amendments Generally. For amendments requiring the consent of Mortgagees, the Association will send each Mortgagee a detailed description, if not the exact wording, of any proposed amendment Notwithstanding any provisions in this Declaration to the contrary, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) provision of this Declaration that benefits the Declarant, the Architectural Reviewer or the Association; (ii) rights, privileges, easements, protections, or defenses of the Declarant, the Architectural Reviewer or the Association; or (iii) rights of the Owners or the Association in relationship to the Declarant, the Architectural Reviewer or the Association, without the written consent of the Declarant, the Architectural Reviewer or the Association, as applicable, attached to and Recorded with such amendment. In addition, no amendment to this Declaration shall modify, alter, abridge or delete any. (a) permissible use of a Unit absent the consent of the Owner(s) of the Unit affected by the change in permissible use, or (b) any license, easement or other contractual rights contained in this Declaration, including, without limitation, any easement, right and license benefiting or in favor of the Declarant, the Architectural Reviewer or the Association.

18.3. Effective. To be effective, an amendment must be in the form of a written instrument: (i) referencing the name of the Regime, the name of the Association, and the Recording data of this Declaration and any amendments hereto, (ii) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if required, Mortgagees, provided, however, this subsection (ii) will not apply for amendments prosecuted by Declarant pursuant to any rights reserved by Declarant under this Declaration, and (iii) Recorded

18.4. Declarant Rights. Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in Appendix "A". An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the Recorded

amendment instrument This *Section 18.4* may not be amended without Declarant's written and acknowledged consent.

18.5. AG Consent Notwithstanding any provision herein to the contrary, so long as AG owns any Unit or other portion of the Property, any amendment to this Declaration shall require the prior written approval of AG Any purported amendment without such approval shall be deemed void and of no force and effect unless subsequently approved by a written consent signed by AG and Recorded.

ARTICLE 19
DISPUTE RESOLUTION

19.1. Introduction and Definitions The Association, the Owners, Declarant, all Persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this *Article* (individually a "**Party**" and collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property (including any Unit) and to avoid the emotional and financial costs of litigation and arbitration if at all possible Accordingly, each Party hereby covenants and agrees that this *Article* applies to all Claims as hereafter defined. This *Article 19* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding one hundred percent (100%) of the votes in the Association As used in this *Article* only, the following words, when capitalized, have the following specified meanings:

19.1.1. "Claim" means

(1) Claims relating to the rights and/or duties of Declarant, or the Association, or an Owner, under the Documents or the Act

(2) Claims relating to the acts or omissions of the Declarant or the Association during its control and administration of the Association, any claim asserted against the Architectural Reviewer, and any claims asserted against the Board or a Person serving as a Board member, or officer of the Association, or the Architectural Reviewer

(3) Claims relating to the design or construction of the Units, Common Elements or any Improvement located within the Regime

19 1 2. "Claimant" means any Party having a Claim against any other Party

19 1 3 "Respondent" means any Party against which a Claim has been asserted by a Claimant

19.2. **Mandatory Procedures.** Claimant may not initiate any proceeding before any administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the procedures of this *Article* As provided in *Section 19.9* below, a Claim will be resolved by binding arbitration.

19.3. **Claim by the Association – Common Elements** In accordance with *Section 13.7* of this Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Unit Owner (whether one or more), or (ii) pertaining to a Claim, as defined in *Section 19.1.1* above, relating to the design or construction of a Unit (whether one or more). In the event the Association asserts a Claim related only to the Common Elements, as a precondition to providing the Notice defined in *Section 19.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 19*, or taking any other action to prosecute a Claim, the Association must:

19 3 1 Independent Report on the Condition of the Common Elements Obtain an independent third-party report (the "**Common Area Report**") from a licensed professional engineer which: (i) identifies the Common Elements subject to the Claim; (ii) describes the present physical condition of the Common Elements subject to the Claim; (iii) describes any modification, maintenance, or repairs to the Common Elements performed by the Association; and (iv) provides specific and detailed recommendations regarding remediation and/or repair of the Common Elements subject to the Claim. For the purposes of this *Section*, an independent third-party report is a report obtained directly by the Association and paid for by the Association and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Association in the Claim The Association, as a precondition to providing the Notice described in *Section 19.5*, must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Common Area Report, the specific Common Elements to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Common Area Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in *Section 19.5*, the Association shall have permitted each party subject to a Claim the right, for a period of at least ninety (90) days, to inspect and correct, any condition identified in the Common Area Report

19.3.2. Owner Meeting and Approval. Obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in *Section 19 5*, initiate the mandatory dispute resolution procedures set forth in this *Article 19*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the

notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success, (ii) a copy of the Common Area Report, (iii) a copy of any proposed engagement letter between the Association and an attorney selected by the Association to assert or provide assistance with the Claim (the "**Engagement Letter**"); (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Claim; (v) a summary of the steps previously taken by the Association to resolve the Claim, (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Claim may affect the market value, marketability, or refinancing of a Unit while the Claim is prosecuted, and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be prepared and signed by a person who is not (i) the attorney who represents or will represent the Association in the Claim, (ii) a member of the law firm of the attorney who represents or will represent the Association in the Claim, or (iii) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section 19.5*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

19.4. **Claim by Owners – Units and Common Elements**. In the event an Owner asserts a Claim related to the Units or Common Elements, as a precondition to providing the Notice defined in *Section 19.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 19*, or taking any other action to prosecute a Claim, the Owner must obtain an independent third-party report (the "**Owner Common Area Report**") from a licensed professional engineer which: (i) identifies the specific Units or Common Elements subject to the Claim; (ii) describes the present physical condition of the Units or Common Elements subject to the Claim, (iii) describes any modification, maintenance, or repairs to the Units or Common Elements performed by the Unit Owner(s) and/or the Association, and (iv) provides specific and detailed recommendations regarding remediation and/or repair of the Units or Common Elements subject to the Claim The Owner Common Area Report must be prepared by a person unaffiliated with the attorney or law firm that represents or will represent the Owner in the Claim The Owner, as a precondition to providing the Notice described in *Section 19.5*, must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Owner Common Area Report, the specific Units or Common Elements to be inspected, and the date and time the inspection will occur Each party subject to a Claim may attend the inspection, personally or through an agent Upon completion, the Owner Common Area Report shall be provided to each party subject to a Claim In addition, before providing the Notice described in *Section 19 5*, the Owner shall have permitted each party

subject to a Claim the right, for a period of at least ninety (90) days, to inspect and correct, any condition identified in the Owner Common Area Report

19.5. Notice. Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i e , the provision of the Documents or other authority out of which the Claim arises), (iii) what Claimant wants Respondent to do or not do to resolve the Claim, and (iv) that the Notice is given pursuant to this *Section 19.5*. The one hundred and twenty (120) day period for mediation set forth in *Section 19.7* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation If the Claim is not resolved during negotiation, mediation pursuant to *Section 19.7* is required without regard to the monetary amount of the Claim

If the Claimant is the Association, the Notice will also include: (i) a true and correct copy of the Common Area Report, (ii) a copy of the Engagement Letter; (iii) copies of all reports, studies, analyses, and recommendations obtained by the Association related to the Common Elements which form the basis of the Claim, (iv) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 19.3.2* above, and (v) and reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice If the Claimant is not the Association, the Notice will also include a true and correct copy of the Owner Common Area Report.

19.6. Negotiation. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim If the Claim involves all or any portion of the Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property to take and complete corrective action.

19.7. Mediation. If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the thirty (30) day period, Respondent will submit the Claim to mediation in accordance with this *Section 19 7*

19.8. Termination of Mediation. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this *Article 19*

19.9. Binding Arbitration-Claims. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (*e.g.*, a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 19.9*.

19 9 1. Governing Rules If a Claim has not been resolved after Mediation as required by *Section 19 7*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 19.9* and the rules and procedures of the American Arbitration Association ("**AAA**") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Davidson County, Tennessee Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above In the event of any inconsistency between any such applicable rules and this *Section 19 9*, this *Section 19 9* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(1) one arbitrator shall be selected by Respondent, in its sole and absolute discretion,

(2) one arbitrator shall be selected by the Claimant, in its sole and absolute discretion, and

(3) one arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

19.9.2. Exceptions to Arbitration, Preservation of Remedies No provision of, nor the exercise of any rights under, this *Section 19.9* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof

19 9.3 Statute of Limitations All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 19.9*

19 9 4. Scope of Award, Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 19.9* and subject to *Section 19 10* (attorney's fees and costs may not be awarded by the arbitrator), provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Tennessee law, (ii) conclusions of law that are erroneous, (iii) an error of federal or state law, or (iv) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim

19 9 5 Other Matters To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other Arbitration proceedings hereunder shall be conducted in Davidson County, Tennessee The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Tennessee Rules of Civil Procedure and Applicable Law Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law or regulation. In no event shall any party discuss with the

news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim

19.10. Allocation of Costs. Notwithstanding any provision in this Declaration to the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator

19.11. General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim

19.12. Period of Limitation

19 12 1 For Actions by an Owner or Resident of a Unit The exclusive period of limitation for any of the Parties to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of a Unit or Common Elements, shall be the earliest of (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design, four (4) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim

19.12.2.For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Elements, shall be the earliest of· (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim, (ii) for Claims other than those alleging construction defect or defective design of the Common Elements, four (4) years and one (1) day from the date that the Association discovered or reasonably should have discovered evidence of the Claim

19.13. Funding Arbitration and Litigation The Association must levy a Special Assessment to fund the estimated costs of arbitration conducted pursuant to this *Article 19* or any judicial action initiated by the Association The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

ARTICLE 20
GENERAL PROVISIONS

20.1. Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either by **electronic mail**, personally or by mail Such notice shall be deemed delivered at the time of personal or **electronic delivery**, and if delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such Person to the Association

20.2. Compliance. The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and Applicable Law

20.3. Higher Authority. The Documents are subordinate to Applicable Law Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with Applicable Law

20.4. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Regime and of promoting and effectuating the fundamental concepts of the Regime set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Tennessee

20.5. Duration. Unless terminated or amended by Owners or the Declarant as permitted herein, the provisions of this Declaration run with and bind the Regime, and will remain in effect perpetually to the extent permitted by Applicable Law

20.6. Captions. In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text

20.7. Construction The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections, or articles hereof Throughout this Declaration there appears text

enclosed by a box. This text is used to aid in the reader's comprehension of certain provisions of this Declaration In the event of a conflict between the text enclosed by a box and any provision of this Declaration, the provision of the Declaration will control

20.8. Termination of the Option Agreement. Notwithstanding any other provision of this Declaration, Meritage Homes Of Tennessee, Inc. and AG acknowledge that, upon recordation of a termination of the Option Agreement, the Option Agreement, for purposes of this Declaration, shall be deemed terminated and shall no longer be in force or have any effect hereunder.

20.9. Termination of AG's Rights. Notwithstanding anything contained in this Declaration, AG's rights pursuant to *Sections 1.4, 1.17, 2.2, 5.1, 6.16, 11.1, 11 4, 13 8, 17 4, and 18.5* of this Declaration shall terminate when AG ceases to own any Unit or other portion of the Property.

20.10. Appendix/Attachments. The following appendixes and exhibits are attached to this Declaration and are incorporated herein by reference·

Attachment 1	Bylaws
Attachment 2	Charter
Attachment 3	Plat
Attachment 4	Maintenance Responsibility Chart
Attachment 5	Guide to Association's Examination of Common Elements
Attachment 6	Guide to Association's Major Management and Governance Functions
Appendix "A"	Declarant Reservations

[SIGNATURE PAGE FOLLOWS]

EXECUTED on this 31 day of October, 2025

DECLARANT:

MERITAGE HOMES OF TENNESSEE, INC.,
an Arizona corporation

By: _____

Printed Name: Kris Keown

Title Vice President of Land

STATE OF Tennessee §
§
COUNTY OF Williamson §

This instrument was acknowledged before me this 31 day of October, 2025 by Kris Keown, Vice President of Land of MERITAGE HOMES OF TENNESSEE, INC., an Arizona corporation, on behalf of said corporation.

(SEAL)

_____
Notary Public Signature

CHELSEE CAMPBELL
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY

My Commission Expires
July 8, 2029

ACKNOWLEDGED AND AGREED:

TPG AG EHC III (MTH) MULTI STATE 2, LLC, a Delaware limited liability company

By: _____

Printed Name: Steven S. Benson

Title: Manager of Essential Housing Asset Management, LLC, an Arizona limited liability company, the Authorized Agent of AG EHC II (MTH) Multi State 2, LLC

THE STATE OF ARIZONA §

COUNTY OF Maricopa §

This instrument was acknowledged before me this 26 day of June, 2025, by Steven S. Benson, Manager of Essential Housing Asset Management, LLC, an Arizona limited liability company, the Authorized Agent of AG EHC II (LEN) Multi State 2, LLC, , a Delaware limited liability company, on behalf of said company.

(SEAL)

Jaime Marie Adams
Notary Public
Maricopa County, Arizona
My Comm Expires 07-01-25
Commission No 607030

_____
Notary Public Signature

EXHIBIT "A"

PROPERTY DESCRIPTION

Tract I

Property located in the 4th councilmanic district of Nashville, Davidson County, Tennessee, being a portion of Lot 3 on the plan of Hickory Commercial Park, Section One, as of record in Plat Book 6900, Page 806, Register's Office for Davidson County, Tennessee and being more particularly described as follows

Beginning at an Iron Rod (Old) on the westerly right-of-way line of Zermatt Avenue (50 foot public right-of-way), said iron rod being the southeast corner of Rose Monte PUD - Phase Three property as conveyed to Lofts RM Holdings, LLC as of record in Instrument No. 20141223-0117585, Register's Office for Davidson County, Tennessee and being the northeast corner of the property herein described,

Thence, following said westerly right-of-way line of Zermatt A venue with a curve to the left having a central angle of 26 degrees 42 minutes 38 seconds, a radius of 641 44 feet, an arc length of 299 03 feet, and a chord bearing and distance of South 23 degrees 07 minutes 59 seconds East, 296 33 feet to an Iron Rod (New), being the northwest corner of the Rose Monte Townhomes, Phase 1 property of record in Instrument No 20051117-0138877, Register's Office for Davidson County, Tennessee,

Thence, leaving said westerly right-of-way line of Zermatt Avenue and following the westerly boundary of said Rose Monte Townhomes, Phase 1, South 53 degrees 50 minutes 08 seconds West, 109 70 feet to an Iron Rod (New),

Thence, South 04 degrees 13 minutes 01 seconds West, 49 48 feet to an Iron Rod (Old),

Thence, South 15 degrees 26 minutes 45 seconds West, 128.51 feet to an Iron Rod (Old),

Thence, South 33 degrees 35 minutes 22 seconds West, 52.54 feet to an Iron Rod (Old),

Thence, South 17 degrees 03 minutes 13 seconds West, 106 55 feet to an Iron Rod (Old);

Thence, South 34 degrees 16 minutes 24 seconds East, 331.50 feet to an Iron Rod (Old) on the northerly boundary of the Summit at the Woodlands Cluster Lot Subdivision of record in Instrument No. 20170724-0074740, Register's Office for Davidson County, Tennessee;

Thence, leaving said Rose Monte Townhomes, Phase 1 and following the northerly boundary of said Summit at the Woodlands property and continuing with the northerly boundary of The Woodlands, Phase 1, Section 1 of record in Plat Book 6900, Page 499, Register's Office for

Davidson County, Tennessee, North 83 degrees 10 minutes 40 seconds West, 333.28 feet to an Iron Rod (Old);

Thence, continuing with the northerly boundary of said Woodlands, Phase 1, Section 1, North 83 degrees 46 minutes 02 seconds West, 544 77 feet to an Iron Rod (Old) on the easterly right-of-way of Woodlands A venue, being the southernmost comer of the property conveyed to LAT Brentwood, LLC, as of record in Instrument No. 20130729-0078688, Register's Office for Davidson County, Tennessee;

Thence, leaving said Woodlands, Phase 1, Section 1 and following the easterly boundary of said LAT Brentwood, LLC property, North 04 degrees 04 minutes 13 seconds East, 436.03 feet to an Iron Rod (Old);

Thence, North 06 degrees 47 minutes 18 seconds East, 190.69 feet to an Iron Rod (Old),

Thence, North 02 degrees 36 minutes 52 seconds East, 134.32 feet to an Iron Rod (New), being the southwest corner of the aforementioned Rose Monte, Phase 3 property;

Thence, leaving said LAT Brentwood, LLC property and following the southerly boundary of said Rose Monte, Phase 3 property, South 84 degrees 16 minutes 35 seconds East, 159.38 feet to an Iron Rod (Old);

Thence, South 05 degrees 43 minutes 25 seconds West, 61 00 feet to an Iron Rod (Old), Thence, South 84 degrees 16 minutes 35 seconds East, 46 00 feet to an Iron Rod (Old);

Thence, with a curve to the right having a central angle of 90 degrees 00 minutes 00 seconds, a radius of 25.00 feet, an arc length of 39 27 feet, a tangent of 25.00 feet and a chord bearing and distance of South 50 degrees 43 minutes 25 seconds West, 35.36 feet to an Iron Rod (Old),

Thence, South 84 degrees 16 minutes 35 seconds East, 71 19 feet to an Iron Rod (Old),

Thence, with a curve to the right having a central angle of 33 degrees 47 minutes 03 seconds, a radius of 177 00 feet, an arc length of 104.37 feet, and a chord bearing and distance of North 67 degrees 23 minutes 04 seconds West, 102 86 feet to an Iron Rod (Old);

Thence, North 39 degrees 30 minutes 28 seconds East, 70 67 feet to an Iron Rod (Old), Thence, North 68 degrees 29 minutes 33 seconds East, 88.19 feet to an Iron Rod (Old); Thence, North 21 degrees 30 minutes 27 seconds West, 16.83 feet to an Iron Rod (Old); Thence, North 68 degrees 29 minutes 33 seconds East, 66.00 feet to an Iron Rod (Old); Thence, North 37 degrees 23 minutes 30 seconds East, 29.44 feet to an Iron Rod (Old), Thence, North 74 degrees 58 minutes 33 seconds East, 108 67 feet to the Point of Beginning Containing 583,411 square feet or 13.39 acres

The above description has been derived from the ALTA/NSPS Land Title Survey of Rose Monte P.ULD , Phase 4 & 5 by Wamble & Associates, PLLC, Jack Whitson, Tennessee R L.S #1732, dated September 10, 2020, revised September 15, 2020, last revised September 18, 2020 as W &A File No.: 1016-0220

Tract II

The beneficial easement rights in and to the use of Lausanne Drive, a private drive, where it adjoins the northern boundary and common areas of the property which immediately adjoins the northern boundary of the property described above as Tract I, said easement rights being further described in Easement Agreements recorded as Instrument No. 202009250110607, and Instrument No 202404190027966, Register's Office for Davidson County, Tennessee

Being the same property conveyed to TPG AG EHC III (MTH) MULTI STATE 2, LLC by Special Warranty Deed from NP 81, LLC, a Delaware limited liability company, dated April 28, 2025, of record in instrument 20250429-0032940, Register's Office for Davidson County, Tennessee

ATTACHMENT 1

BYLAWS

[SEE ATTACHED]

BYLAWS
OF
ZERMATT RESIDENTIAL COMMUNITY, INC.

ARTICLE 1
INTRODUCTION

1.1 **Property** These Bylaws of Zermatt Residential Community, Inc., provide for the governance of the horizontal property regime known as Zermatt, established on certain real property located in Davidson County, Tennessee (the "**Property**"), as more particularly described in that certain Declaration of Horizontal Property Regime for Zermatt, recorded or to be recorded in the Register of Deeds of Davidson County, Tennessee (the "**Declaration**").

1 2 **Parties to Bylaws**. All present or future Owners of Units and all other Persons who use or occupy the Property in any manner are subject to these Bylaws, the Declaration, and the other Documents as defined in the Declaration The mere acquisition or occupancy of a Unit will signify that these Bylaws are accepted, ratified, and will be strictly followed.

1 3 **Definitions** Words and phrases defined in the Declaration have the same meanings when used in these Bylaws *Article 1* of the Declaration is incorporated herein by reference.

1.4 **Nonprofit Purpose** The Association is organized to be a nonprofit corporation

1 5 **Declarant Control** Notwithstanding anything to the contrary in these Bylaws, a number of provisions are modified by the Declarant's reservations in *Appendix "A"* of the Declaration during the Declarant Control Period and the Development Period, as defined in the Declaration

1 6 **General Powers and Duties**. The Association, acting through the Board, has the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Regime as may be required or permitted by the Documents and Tennessee law The Association may do any and all things that are lawful and which are necessary, proper, or desirable in operating for the best interests of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Documents

ARTICLE 2
BOARD OF DIRECTORS

During the Declarant Control Period, *Appendix "A"* of the Declaration governs the qualification, appointment, removal, and replacement of directors. The initial directors will be appointed by Declarant and need not be Owners. Directors appointed by Declarant may not be removed by the Owners and may be removed by Declarant only. Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee.

2.1 **Number and Term of Office**. The Board will consist of three (3) persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. Upon expiration or termination of the Declarant Control Period, one director will be elected for a three (3) year term, one director will be elected for a two (2) year term, and one director will be elected for a one (1) year term. After the initial terms, all future terms shall be three (3) years. A director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed. The number of directors may be changed by amendment of these Bylaws, but may not be less than three (3).

2 2 **Qualification** The following qualifications apply to the election or appointment of persons to the Board.

2.2 1 Owners. Upon expiration or termination of the Declarant Control Period, at least a Majority of the directors must be Members of the Association or spouses of Members

2.2.2 Entity Member. If a Unit is owned by a legal entity, such as a partnership or corporation, any officer, partner, agent, or employee of that entity Member is eligible to serve as a director and is deemed to be a Member for the purposes of this Section If the relationship between the entity Member and the director representing it terminates, that directorship will be deemed vacant

2.2.3 Delinquency No person may be elected or appointed as a director if any assessment or fine against the person or his Unit is delinquent at the time of election or appointment, provided he has been given notice of the delinquency and a reasonable opportunity to cure the delinquency.

2.2.4 Litigation No person may be elected or appointed as a director if the person is a party adverse to the Association or the Board in pending litigation to which the Association or the Board is a party

2 3 **Election** Upon expiration or termination of the Declarant Control Period, directors will be elected by the Members of the Association. The election of directors will be conducted at the annual meeting of the Association, at any special meeting called for that purpose, or by mail, facsimile transmission, electronic mail, or a combination of any of these

2 4 **Vacancies** Vacancies on the Board caused by any reason, except the removal of a director by a vote of the Association, are filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board Each director so elected serves until the next meeting of the Association, at which time a successor will be elected to fill the remainder of the term

2 5 **Removal of Directors**

2.5 1 Removal by Members At any annual meeting or special meeting of the Association, any one or more of the directors may be removed with or without cause by Members representing at least two-thirds of the votes present in person or by proxy at the meeting, and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Members must be given an opportunity to be heard at the meeting.

2 5 2 Removal by Directors A director may not be removed by the officers or by the remaining directors, except for the following limited reasons for which a director may be removed by at least a Majority of the other directors at a meeting of the Board called for that purpose.

i. The director is a party adverse to the Association or the Board in pending litigation to which the Association or the Board is a party, provided the Association did not file suit to effect removal of the director.

ii. The director's account with the Association has been delinquent for at least ninety (90) days or has been delinquent at least three (3) times during the preceding twelve (12) months, provided he was given notice of the default and a reasonable opportunity to cure.

iii The director has refused or failed to attend three (3) or more meetings of the Board during the preceding twelve (12) months; provided he was given proper notice of the meetings.

iv. The director has refused or failed to cure a violation of the Documents for which he has been given notice, a reasonable opportunity to cure, and an opportunity to request a hearing before the Board.

2 6 Meetings of the Board

2 6.1 Regular Meetings of the Board Regular meetings of the Board may be held at a time and place that the Board determines, from time to time. Notice of regular meetings of the Board will be given to each director, personally or by telephone, written, or electronic communication, at least three (3) days prior to the date of the meeting.

2.6 2 Special Meetings of the Board. Special meetings of the Board may be called by the president or, if he is absent or refuses to act, by the secretary, or by any two (2) directors At least three (3) days' notice will be given to each director, personally or by telephone, written, or electronic communication, which notice must state the place, time, and purpose of the meeting

2 6 3 Emergency Meetings In case of emergency, the Board may convene a meeting after making a diligent attempt to notify each director by any practical method

2 6 4 Conduct of Meetings. The president presides over meetings of the Board and the secretary keeps, or causes to be kept, a record of resolutions adopted by the Board and a record of transactions and proceedings occurring at meetings.

2 6 5 Quorum. At meetings of the Board, a Majority of directors constitutes a quorum for the transaction of business, and the acts of the Majority of the directors present at a meeting at which a quorum is present are the acts of the Board. If less than a quorum is present at a meeting of the Board, the Majority of those present may adjourn the meeting from time to time. At any reconvened meeting at which a quorum is present, any business that may have been transacted at the meeting as originally called may be transacted without further notice. Directors may not participate by proxy at meetings of the Board

2.6.6 Open Meetings. Regular and special meetings of the Board are open to Members of the Association, subject to the following provisions to the extent permitted or required by the Act or the Tennessee Nonprofit Corporation Act·

(i) No audio or video recording of the meeting may be made, except by the Board or with the Board's prior express consent.

(ii) Members who are not directors may not participate in Board deliberations under any circumstances, and may not participate in Board discussions unless the Board expressly so authorizes at the meeting.

(iii) The Board may adjourn any meeting and reconvene in executive session to discuss and vote on personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar or sensitive nature The nature of business to be considered in executive session will first be announced in open session.

(iv) The Board may prohibit attendance by non-Members, including representatives, proxies, agents, and attorneys of Members

(v) The Board may prohibit attendance by any Member who disrupts meetings or interferes with the conduct of Board business.

(vi) The Board may but is not required to publish to Members the time, date, and place of Board meetings, but will provide the information if requested in writing by a Member on a meeting by meeting basis.

2.6 7 Telephone Meetings Members of the Board or any committee of the Association may participate in and hold meetings of the Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other Participation in such meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the

express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

2.6.8 Action without a Meeting. Any action required or permitted to be taken by the Board at a meeting may be taken without a meeting, if all directors individually or collectively consent in writing to such action. The written consent must be filed with the minutes of Board meetings. Action by written consent has the same force and effect as a unanimous vote This Section does not apply to actions that require meetings under the Act or the Tennessee Nonprofit Corporation Act.

2.6 9 Deadlock. If the Board is required to take an action under the Documents or Applicable Law and there is a deadlock among the directors, the deadlock may be submitted by a director to arbitration, which shall be resolved by one (1) arbitrator in Nashville, Tennessee in accordance with the Commercial Arbitration Rules of the AAA. The decision reached by the arbitrator shall be final and binding and the costs of such arbitration shall be paid by the Association.

2.7 **Liabilities and Standard of Care** In performing their duties, the directors are required to exercise certain standards of care and are subject to certain liabilities, including but not limited to the following provisions of Tennessee law. Section 48-58-301 of the Tennessee Nonprofit Corporation Act.

2 8 **Powers and Duties** The Board has all the powers and duties necessary for the administration of the Association and for the operation and maintenance of the Property. The Board may do all acts and things except those which, by law or the Documents, are reserved to the Members and may not be delegated to the Board Without prejudice to the general and specific powers and duties set forth in laws or the Documents, or powers and duties as may hereafter be imposed on the Board by resolution of the Association, the powers and duties of the Board include, but are not limited to, the following·

2.8.1 Appointment of Committees. The Board, by resolution, may from time to time designate standing or ad hoc committees to advise or assist the Board with its responsibilities The resolution may establish the purposes and powers of the committee created, provide for the appointment of a chair and committee Members, and may provide for reports, termination, and other administrative matters deemed appropriate by the Board Members of committees will be appointed from among the Owners and Occupants

2 8 2 Manager The Board may employ a manager or managing agent for the Association, at a compensation established by the Board, to perform duties and services authorized by the Board

2.9 **Fidelity Bonds** Any person handling or responsible for Association funds, including officers, agents, and employees of the Association, must furnish adequate fidelity bonds The premiums on the bonds may be a common expense of the Association.

ARTICLE 3
OFFICERS

3.1 **Designation**. The principal officers of the Association are the president, the secretary, and the treasurer. The Board may appoint one (1) or more vice presidents and other officers and assistant officers as it deems necessary. The president and secretary must be directors. Other officers may, but need not, be Members or directors. Any two (2) offices may be held by the same person, except the offices of president and secretary If an officer is absent or unable to act, the Board may appoint a director to perform the duties of that officer and to act in place of that officer, on an interim basis.

3.2 **Election of Officers** The officers are elected no less than annually by the directors at the organizational meeting of the Board and hold office at the pleasure of the Board. Except for resignation or removal, officers hold office until their respective successors have been designated by the Board Notwithstanding the foregoing, during the Declarant Control Period, the Declarant will have the exclusive authority to appoint and remove all officers of the Association.

3.3 **Removal and Resignation of Officers**. A Majority of directors may remove any officer, with or without cause, at any regular meeting of the Board or at any special meeting of the Board called for that purpose A successor may be elected at any regular or special meeting of the Board called for that purpose An officer may resign at any time by giving written notice to the Board. Unless the notice of resignation states otherwise, it is effective when received by the Board and does not require acceptance by the Board The resignation or removal of an officer who is also a director does not constitute resignation or removal from the Board

3.4 **Standard of Care**. In performing their duties, the officers are required to exercise the standards of care provided by Section 48-58-301 of the Tennessee Nonprofit Corporation Act

3.5 **Description of Principal Offices**.

3.5 1 President As the chief executive officer of the Association, the president: (i) presides at all meetings of the Association and of the Board; (ii) has all the general powers and duties which are usually vested in the office of president of a corporation organized under the laws of the State of Tennessee, (iii) has general supervision, direction, and control of the business of the Association, subject to the control of the Board; and (iv) sees that all orders and resolutions of the Board are carried into effect

3.5.2 Secretary. The secretary. (i) keeps the minutes of all meetings of the Board and of the Association; (ii) has charge of such books, papers, and records as the Board may direct; (iii) maintains a record of the names and addresses of the Members for the mailing of notices, and (iv) in general, performs all duties incident to the office of secretary.

3 5 3 Treasurer The treasurer (i) is responsible for Association funds, (ii) keeps full and accurate financial records and books of account showing all receipts and disbursements, (iii) prepares all required financial data and tax returns, (iv) deposits all monies or other valuable effects in the name of the Association in depositories as may from time to time be designated by the Board, (v) prepares the annual and supplemental budgets of the Association, (vi) reviews the accounts of the managing agent on a monthly basis in the event a managing agent is responsible for collecting and disbursing Association funds; and (vii) performs all the duties incident to the office of treasurer

3.6 **Authorized Agents**. Except when the Documents require execution of certain instruments by certain individuals, the Board may authorize any person to execute instruments on behalf of the Association In the absence of Board designation, the president and the secretary are the only persons authorized to execute instruments on behalf of the Association.

ARTICLE 4
MEETINGS OF THE ASSOCIATION

4.1 **Annual Meeting**. An annual meeting of the Association will be held once during each twelve (12) month period on a date and at a time determined by the Board At each annual meeting the Members will elect directors in accordance with these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

4.2 **Special Meetings**. It is the duty of the President to call a special meeting of the Association if directed to do so by a Majority of the Board or by a petition signed by Owners of at least forty percent (40%) of the Units. The meeting must be held within thirty (30) days after the Board resolution or receipt of petition. The notice of any special meeting must state the time, place, and purpose of the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting

4 3 **Place of Meetings** Meetings of the Association may be held at the Property or at a suitable place convenient to the Members, as determined by the Board

4 4 **Notice of Meetings** At the direction of the Board, written notice of meetings of the Association will be given to an Owner of each Unit at least ten (10) days but not more than sixty (60) days prior to the meeting Notices of meetings will state the date, time, and place the meeting is to be held. Notices will identify the type of meeting as annual or special, and will state the particular purpose of a special meeting Notices may also set forth any other items of information deemed appropriate by the Board Notice may be waived in writing signed by all Members.

4 5 **Ineligibility** The Board may determine that no Member may vote at meetings of the Association if the Member's financial account with the Association is in arrears forty-five (45) days before the date of a meeting of the Association at which Members will vote, provided each ineligible Member is given notice of the arrearage and an opportunity to become eligible The Board may specify the manner, place, and time for payment for purposes of restoring

eligibility. A determination of Members entitled to vote at a meeting of the Association is effective for any adjournment of the meeting, provided the date of the adjourned meeting is not more than forty-five (45) days after the original meeting.

4 6 **Voting Members List** The Board will prepare and make available a list of the Association's voting Members in accordance with Section 48-57-107 of the Tennessee Nonprofit Corporation Act.

4 7 **Quorum**. At any meeting of the Association, the presence in person or by proxy of Members representing at least twenty percent (20%) of the Units constitutes a quorum. Members present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal, during the course of the meeting, of Members constituting a quorum.

4 8 **Lack of Quorum**. If a quorum is not present at any meeting of the Association for which proper notice was given, Members representing at least a Majority of the votes present at the meeting, although not constituting a quorum, may vote to recess the meeting for not more than twenty-four (24) hours in order to attain a quorum, provided the place of the meeting remains as stated in the notice. If the meeting is adjourned without attainment of a quorum, notice of a new meeting for the same purposes within fifteen (15) to thirty (30) days may be given to an Owner of each Unit, at which meeting the Members present in Person or by proxy (even if representing less than twenty percent (20%) of the Units) will be sufficient to constitute a quorum for the purposes of that meeting.

4.9 **Votes**. The vote of Members representing at least a Majority of the votes cast at any meeting at which a quorum is present binds all Members for all purposes, except when a higher percentage is required by these Bylaws, the Declaration, or by law. Cumulative voting is prohibited.

4 9 1 Co-Owned Units. If only one of the multiple Owners of a Unit is present at a meeting of the Association, that person may cast the vote allocated to that Unit. If more than one of the multiple Owners is present, the vote allocated to that Unit may be cast only in accordance with the Owners' unanimous agreement. Multiple Owners are in unanimous agreement if one of the multiple Owners casts the vote allocated to a Unit and none of the other Owners makes prompt protest to the person presiding over the meeting.

4 9 2 Corporation-Owned Units. If a Unit is owned by a corporation, the vote appurtenant to that Unit may be cast by any officer of the corporation in the absence of the corporation's written appointment of a specific person to exercise its vote The vote of a partnership may be cast by any general partner in the absence of the partners' written appointment of a specific person The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of a corporation or partnership is qualified to vote

4 9.3 Association-Owned Units Votes allocated to a Unit owned by the Association may be counted towards a quorum but such votes may not be cast

4 10 **Proxies**. Votes may be cast in person or by written proxy. To be valid, each proxy must· (i) be signed and dated by a Member or his attorney in fact; (ii) identify the Unit to which the vote is appurtenant, (iii) name the person or title (such as "presiding officer") in favor of whom the proxy is granted, such person having agreed to exercise the proxy; (iv) identify the meeting for which the proxy is given; (v) not purport to be revocable without notice; and (vi) be delivered to the secretary, to the person presiding over the Association meeting for which the proxy is designated, or to a person or company designated by the Board Unless the proxy specifies a shorter or longer time, it terminates eleven (11) months after the date of its execution Perpetual or self-renewing proxies are permitted, provided they are revocable To revoke a proxy, the granting Member must give actual notice of revocation to the person presiding over the Association meeting for which the proxy is designated Unless revoked, any proxy designated for a meeting which is adjourned, recessed, or rescheduled is valid when the meeting reconvenes. A proxy may be delivered by fax. However, a proxy received by fax may not be counted to make or break a tie vote unless (a) the proxy has been acknowledged or sworn to by the Member, before and certified by an officer authorized to take acknowledgments and oaths, or (b) the Association also receives the original proxy within five (5) days after the vote

4 11 **Conduct of Meetings**. The president, or any person designated by the Board, presides over meetings of the Association The secretary keeps, or causes to be kept, the minutes of the meeting which should record all resolutions adopted and all transactions occurring at the meeting, as well as a record of any votes taken at the meeting. The person presiding over the meeting may appoint a parliamentarian. The then current edition of Robert's Rules of Order governs the conduct of meetings of the Association when not in conflict with the Documents. Votes should be tallied by Members appointed by the person presiding over the meeting.

4 12 **Order Of Business**. Unless the notice of meeting states otherwise, or the assembly adopts a different agenda at the meeting, the order of business at meetings of the Association is as follows.

- Determine votes present by roll call or check in procedure
- Announcement of quorum
- Proof of notice of meeting
- Approval of minutes of preceding meeting
- Reports of Officers (if any)
- Election of directors (when required)

- Unfinished or old business
- New business

4 13 **Adjournment of Meeting**. At any meeting of the Association, a Majority of the Members present at that meeting, either in person or by proxy, may adjourn the meeting to another time and place.

4 14 **Action without Meeting**. Subject to Board approval, any action which may be taken by a vote of the Members at a meeting of the Association may also be taken without a meeting by written consents. The Board may permit Members to vote by any method allowed by Sections 48-57-104, 48-57-108 or 48-57-109 of the Tennessee Nonprofit Corporation Act, which may include hand delivery, mail, fax, email, or any combination of these Written consents by Members representing at least a Majority of votes in the Association, or such higher percentage as may be required by the Documents, constitutes approval by written consent. This Section may not be used to avoid the requirement of an annual meeting and does not apply to the election of directors.

4.15 **Telephone Meetings** Members of the Association may participate in and hold meetings of the Association by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other Participation in the meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

ARTICLE 5
RULES

5.1 **Rules**. The Declarant has adopted initial Rules for. (i) the administration of the Association and the Documents, (ii) the maintenance, management, operation, use, conservation, and beautification of the Property, and (iii) the health, comfort, and general welfare of the Occupants, provided, however, that such rules may not be in conflict with law or the Documents. The Board will, at all times, maintain the then current and complete Rules in a written form which can be copied and distributed to the Members The Board has the right to amend, from time to time, the Association Rules, provided, however, that until the expiration or termination of the Development Period, all amendments to the Association Rules must be approved in advance and in writing by Declarant and AG, so long as AG owns any Unit or portion of the Property.

5.2 **Adoption and Amendment** Any Association Rule may be adopted, amended, or terminated by the Board, provided that the Association Rule and the requisite approval of the Board, and Declarant, and AG so long as AG owns any Unit or other portion of the Property, until expiration or termination of the Development Period, are properly Recorded as a resolution in the minutes of the meeting of the Board

5 3 **Distribution** On request from any Member or Occupant, the Board will provide a current and complete copy of Rules. Additionally, the Board will, from time to time, distribute copies of the current and complete Rules to Owners and, if the Board so chooses, to non-Member Occupants

ARTICLE 6
ENFORCEMENT

6 1 **Remedies**. The violation of any provision of the Documents gives the Board the following rights, in addition to any other rights set forth in the Documents:

6 1.1 Fines To impose reasonable fines, if notice and an opportunity to be heard are provided

6 1.2 Self-Help After notice and an opportunity to be heard are given, except in case of an emergency, to enter the Unit or Common Element in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition (except for additions or alterations of a permanent nature that may exist in that Unit) that is contrary to the intent and meaning of the provisions of the Documents The Board may not be deemed liable for any manner of trespass by this action

6.1.3 Courts To enjoin, abate, or remedy, by appropriate legal proceedings, the continuance of any breach.

6 2 **Notice and Hearing** Before imposing a fine or exercising self-help abatement, the Board must give the Owner a written violation notice and an opportunity to be heard.

6 2 1 Notice of Violation. Before levying a fine, the Association will give the Owner a written violation notice via certified mail, return receipt requested, and an opportunity to be heard, if requested by the Owner. This requirement may not be waived. The Association's written violation notice will contain the following items (i) the date the violation notice is prepared or mailed; (ii) a description of the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due to the Association from the Owner, (iii) a reference to the rule or provision that is being violated, (iv) a description of the action required to cure the violation, (v) the timeframe in which the violation is required to be cured to avoid the fine or suspension, (vi) the amount of the fine, (vii) a statement that no later than the thirtieth (30th) day after receiving the notice, the Owner may request a hearing, and (viii) a statement informing the Owner that they may have special rights or relief related to the enforcement action under federal law, including the Service members Civil Relief Act (50 U S C. app. section et seq), if the Owner is serving on active military duty. The notice sent out is further subject to the Association's Fine Policy

6 2.2 Notice to Occupant In addition to giving the written violation notice to the Owner, the Board may also give a copy of the notice to the non-Owner Occupant, if the Board deems it appropriate

6.2.3 Request for Hearing To request a hearing before the Board, an Owner must submit a written request to the Board within thirty (30) days after receiving the violation notice (the "**Request**"). The Association must then hold the hearing requested no later than thirty (30) days after the Board receives the Request. The Board must notify the Owner of the date, time, and place of the hearing at least ten (10) days' before the date of the hearing, and should be scheduled to provide a reasonable opportunity for both the Board and the Owner to attend.

6 2.4 Pending Hearing Pending the hearing, the Board may continue to exercise the Association's other rights and remedies for the violation, as if the declared violation were valid The Owner's request for a hearing suspends only the levy of the fine or the abatement action described in the notice.

6.2 5 Hearing. The hearing will be held in a closed or executive session of the Board. At the hearing, the Board will consider the facts and circumstances surrounding the violation. The Owner may attend the hearing in person, or may be represented by another person or written communication No audio or video recording of the hearing may be made

6 2 6 Minutes of Hearing The minutes of the hearing must contain a statement of the results of the hearing and the amount of fine, if any, imposed, or abatement action, if any, authorized A copy of the violation notice and request for hearing should be placed in the minutes of the hearing. If the Owner appears at the hearing, the notice requirement will be deemed satisfied

6.3 **Imposition of Fine**. Within thirty (30) days after levying the fine or authorizing the abatement, the Board must give the Owner notice of the levied fine or abatement action. If the fine or action is announced at the hearing at which the Owner is actually present, the notice requirement will be satisfied Otherwise, the notice must be in writing.

6.3.1 Amount The Board may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Board may establish a schedule of fines for certain types of violations The amount and cumulative total of a fine must be reasonable in comparison to the violation. If the Board allows fines to accumulate, it may establish a maximum amount for a particular fine, at which point the total fine will be capped.

6 3 2 Type of Fine If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, weekly, or monthly). If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis.

6.3 3 Other Fine-Related The Association is not entitled to collect a fine from an Owner to whom it has not given notice and an opportunity to be heard The Association may not charge interest on unpaid fines. The Association may not foreclose its assessment lien on a debt consisting solely of fines. The Board may adopt a collection policy that applies Owners' payments to unpaid fines before retiring other types of assessments.

6.4 **Additional Enforcement Rights**. Notwithstanding the notice and hearing requirement, the Board may take immediate and appropriate action, without giving the notices required in this Article, against violations of the Documents which, in the Board's opinion, are: (i) self-evident, such as vehicles parked illegally or in violation of posted signs; (ii) threatening to life or property; or (iii) repeat violations of the same provision by the same Owner to whom prior notices and demands have been given for the same violation Further, the provisions of this Article do not apply to specific remedies provided in the Documents for certain violations, such as nonpayment of assessments

ARTICLE 7
OBLIGATIONS OF THE OWNERS

7 1 **Proof of Ownership**. On request by the Association from time to time, any person who purports to be an Owner or the agent of an Owner must furnish to the Board evidence of ownership of the Unit. A copy of the recorded deed is the customary evidence. This requirement may be satisfied by receipt of a Board approved form that is completed and acknowledged by a title company or attorney at time of conveyance of the Unit or any interest therein. The Association may refuse to recognize a person as a Member unless the requested documentation is provided

7 2 **Owners' Information**. Within thirty (30) days after acquiring an ownership interest in a Unit, the Owner must provide the Association with the Owner's mailing address, telephone number, and driver's license number, if any; the name and telephone number of any Occupant other than the Owner, and the name, address, and telephone number of any person managing the Unit as agent of the Unit Owner An Owner must notify the Association within thirty (30) days after he has notice of a change in any information required by this Section, and must provide the information on request by the Association from time to time

7.3 **Mailing Address** The Owner or the several co-Owners of a Unit must register and maintain one mailing address to be used by the Association for mailing of notices, demands, and all other communications. If an Owner fails to maintain a current mailing address with the Association, the address of the Owner's Unit is deemed to be his mailing address.

7 4 **Registration of Mortgagees** Within thirty (30) days after granting a lien against his Unit, the Owner must provide the Association with the name and address of the holder of the lien and the loan number The Owner must notify the Association within thirty (30) days after he has notice of a change in the information required by this Section Also, the Owner will provide the information on request by the Association from time to time

7.5 **Assessments** All Owners are obligated to pay assessments imposed by the Association to meet the common expenses as defined in the Declaration. A Member is deemed to be in good standing and entitled to vote at any meeting of the Association if he is current in the assessments made or levied against him and his Unit

7 6 **Compliance with Documents**. Each Owner will comply with the provisions and terms of the Documents, and any amendments thereto. Further, each Owner will always endeavor to observe and promote the cooperative purposes for which the Property was established

ARTICLE 8
ASSOCIATION RECORDS

8.1 **Records** The Association will use its best efforts to keep the records required by Section 66-27-113 of the Act and Section 48-66-101 of the Tennessee Nonprofit Corporation Act, including the following:

(i) Minutes or a similar record of the proceedings of meetings of the Association.

(ii) Minutes or a similar record of the proceedings of meetings of the Board

(iii) Names and mailing addresses of the Members, the currency and accuracy of the information being the responsibility of the Members

(iv) Names and mailing addresses of the mortgagees, the currency and accuracy of the information being the responsibility of the Members and their mortgagees.

(v) Financial records and books of account for the Association, kept in a manner consistent with generally accepted accounting principles

(vi) Copies of income tax returns prepared for the Internal Revenue Service

(vii) Copies of the Documents and all amendments to any of these

(viii) A record of all votes or written consents by which amendments to the Documents were approved, for at least four (4) years after the approval.

8 2 **Inspection of Books and Records**. Books and records of the Association will be made available for inspection and copying pursuant to Section 66-27-113 of the Act and Sections 48-66-102 and 48-66-103 of the Tennessee Nonprofit Corporation Act

8.2.1 Proper Purpose. The Board may require a Member to submit a written demand for inspection, stating the purpose for which the Member will inspect the books and records The Board has the following rights (i) to determine whether the Member's purpose for inspection is proper, (ii) to deny the request if the Board determines that the Member's purpose

is not proper, (iii) if granting the request, to identify which books and records are relevant to the Member's stated purpose for inspection.

8 2 2 Copies A Member, at Member's expense, may obtain photocopies of books and records for which the Board grants the right of inspection The Board has the right to retain possession of the original books and records, to make copies requested by the Member, and to charge the Member a reasonable fee for copying.

8.2 3 Member's Agent A Member's inspection of the books and records may be assisted or performed by the Member's agent, accountant, or attorney.

8 2 4 Records of Attorneys and Accountants The files and records of an attorney or accountant who performs services for the Association are not records of the Association, are not subject to inspection by Members, and are not subject to production in a legal proceeding.

ARTICLE 9
NOTICES

9.1 **Co-Owners**. If a Unit is owned by more than one person, notice to one co-Owner is deemed notice to all co-Owners

9.2 **Delivery of Notices**. Any written notice required or permitted by these Bylaws may be given personally, by mail, by electronic mail, by fax, or by any other method permitted by the Tennessee Nonprofit Corporation Act If mailed, the notice is deemed delivered when deposited in the U S mail addressed to the Member at the address shown on the Association's records. If transmitted by fax or electronic mail, the notice is deemed delivered on successful transmission of the facsimile or electronic message

9 3 **Waiver of Notice** Whenever a notice is required to be given to an Owner, Member, or director, a written waiver of the notice, signed by the person entitled to the notice, whether before or after the time stated in the notice, is equivalent to giving the notice. Attendance by a Member or director at any meeting of the Association or Board, respectively, constitutes a waiver of notice by the Member or director of the time, place, and purpose of the meeting. If all Members or directors are present at any meeting of the Association or Board, respectively, no notice is required and any business may be transacted at the meeting.

ARTICLE 10
DECLARANT PROVISIONS

10.1 **Conflict** The provisions of this Article control over any provision to the contrary elsewhere in these Bylaws

10 2 **Board of Directors** During the Declarant Control Period, *Appendix "A"* of the Declaration governs the number, qualification, appointment, removal, and replacement of

directors The initial directors will be appointed by Declarant and need not be Owners or Occupants Directors appointed by Declarant may not be removed by the Owners and may be removed by Declarant only. Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee

10 3 **Organizational Meeting** Within sixty (60) days after the end of the Declarant Control Period, or sooner at Declarant's option, Declarant will call an organizational meeting of the Members for the purpose of electing directors, by ballot of Members. Notice of the organizational meeting will be given as if it were notice of an annual meeting

ARTICLE 11
AMENDMENTS TO BYLAWS

11.1 **Authority**. These Bylaws may be amended by a Majority vote of the Board of Directors or the vote of Members representing at least sixty-seven percent (67%) of the Members. Any amendment to these Bylaws must be approved in advance and in writing by the Declarant, and AG so long as AG owns any Unit or portion of the Property, during the Development Period.

11.2 **Mortgagee Protection** In addition to the notices and consents required by these Bylaws, certain actions and amendments require notice to or approval by Mortgagees, pursuant to the Mortgagee Protection article of the Declaration. If applicable, the Association must give the required notices to and obtain the required approvals from Mortgagees

11.3 **Effective**. To be effective, each amendment must be in writing, reference the names of the Property and the Association, and be executed by a Majority of the Board of Directors Further, if these Bylaws are publicly recorded, the amendment must recite the recording data for the Bylaws, and be recorded in the Register of Deeds of Davidson County, Tennessee.

11 4 **Declarant and AG Protection** During the Development Period, no amendment of these Bylaws may affect the Declarant's or AG's rights herein without the Declarant's or AG's written and acknowledged consent, as applicable. Specifically, this Section and the article titled "Declarant Provisions" may not be amended without the prior written approval of the Declarant and AG, so long as AG owns any Unit or portion of the Property. The Declarant's and AG's written consent, as applicable, must be part of the amendment instrument

ARTICLE 12
GENERAL PROVISIONS

12.1 **Compensation**. A director, officer, Member, or Occupant may not receive any pecuniary profit from the operation of the Association, and no funds or assets of the Association may be paid as a salary or as compensation to, or be distributed to, or inure to the benefit of a director, officer, Member, or Occupant Nevertheless,

(i) Reasonable compensation may be paid to a director, officer, Member, or Occupant for services rendered to the Association in other capacities.

(ii) A director, officer, Member, or Occupant may, from time to time, be reimbursed for his actual and reasonable expenses incurred on behalf of the Association in connection with the administration of the affairs of the Association, provided the expense has been approved by the Board.

(iii) The Board may budget and use Association funds to purchase awards, certificates, a celebratory meal, or other customary tokens or demonstrations of appreciation for volunteer activities

(iv) This provision does not apply to distributions to Unit Owners permitted or required by the Declaration or the Act

12.2 **Conflicting Provisions**. If any provision of these Bylaws conflicts with any provision of the laws of the State of Tennessee, the conflicting Bylaws provision is null and void, but all other provisions of these Bylaws remain in full force and effect. In the case of any conflict between the charter of the Association and these Bylaws, the charter controls. In the case of any conflict between the Declaration and these Bylaws, the Declaration controls

12.3 **Severability**. Whenever possible, each provision of these Bylaws will be interpreted in a manner as to be effective and valid. Invalidation of any provision of these Bylaws, by judgment or court order, does not affect any other provision which remains in full force and effect.

12.4 **Construction**. The effect of a general statement is not limited by the enumerations of specific matters similar to the general The captions of articles and sections are inserted only for convenience and may not be construed as defining or modifying the text to which they refer The singular is construed to mean the plural, when applicable, and the use of masculine or neuter pronouns includes the feminine

12 5 **Fiscal Year** The fiscal year of the Association will be set by resolution of the Board, and is subject to change from time to time as the Board determines. In the absence of a resolution by the Board, the fiscal year is the calendar year

12.6 **Waiver**. No restriction, condition, obligation, or covenant contained in these Bylaws may be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur

12.7 **Indemnification** To the fullest extent permitted by Applicable Law, the Association will indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant, or agent of the Association against

expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (i) acted in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association, or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful The termination of any action, suit, or proceeding by settlement, or upon a plea of Nolo Contendere or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

12 8 **Termination of AG's Rights**. Notwithstanding anything contained in these Bylaws, AG's rights pursuant to *Sections 5.1, 5.2, 11.1, and 11.4* of these Bylaws shall terminate when AG ceases to own any Unit or other portion of the Property.

12.9 **Preparer** These Bylaws were prepared in by Robert D. Burton, Esq, Winstead PC, 1221 Broadway, Suite 2030, Nashville, Tennessee 37203.

ATTACHMENT 2

CHARTER

ZERMATT RESIDENTIAL COMMUNITY, INC.

The undersigned, acting as incorporator of a nonprofit corporation under the Tennessee Nonprofit Corporation Act, Tennessee Code Annotated, §§ 48-51-101, *et seq* (the "**Nonprofit Act**") adopts the following Charter for such Association:

ARTICLE I
NAME; PRINCIPAL ADDRESS

The name of the corporation is: Zermatt Residential Community, Inc. (hereinafter called the "**Association**") The principal executive office of the Association is located in Williamson County, Tennessee, and its street address is 2555 Meridian Blvd., Suite 100, Franklin, Tennessee 37067. The email address of the corporation is Kris.Keown@meritagehomes com

ARTICLE II
NONPROFIT CORPORATION; MUTUAL BENEFIT CORPORATION

The Association is a mutual benefit corporation. This Association is not organized for profit and is not a religious organization. The North American Industry Classification System Code for the Association is 813990.

ARTICLE III
DURATION

The Association shall exist perpetually.

ARTICLE IV
PURPOSE AND POWERS OF THE ASSOCIATION

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Nonprofit Act, and does not contemplate pecuniary gain or profit to its members. The purpose for which the Association is organized is to serve as the homeowner's association charged with the governance of the residential community known as Zermatt located or to be located in Davidson County, Tennessee (the "**Community**") In furtherance of its purposes, the Association shall have the following powers which, unless indicated otherwise by this Charter, that certain Declaration of Horizontal Property Regime for Zermatt, recorded in the Register of Deeds Office of Davidson County, Tennessee (the "**Declaration**"), the Bylaws, or Applicable Law, may be exercised by the Board of Directors:

but not limited to the following (capitalized terms not defined herein shall have the meaning as set forth in the Declaration):

1. To acquire, hold, lease, manage, mortgage or convey real, personal or mixed property wherever situated.

2. To make and collect assessments against the members as provided in the Declaration to defray the costs, expenses and losses of the Community or any other business enterprise, venture or property interest of the Association, and to use the proceeds of the assessments in the exercise of the powers and duties herein provided.

3. To borrow funds to pay for such expenditures as may be authorized by the provisions of the Declaration and to assign as security for said loan rights to future income of the Association through assessments.

4. To maintain, repair, replace, clean, sanitize and operate the property of the Community or the property of the Association.

5. To purchase insurance for the protection of the Community and the Association and its members.

6. To make and amend the Rules respecting the use of the property of the Community or the property of the Association.

7. To lease or grant easements or licenses for use of the Common Element of the Community in a manner not inconsistent with the rights of owners of Units in the Community.

8. To enforce by legal means the provisions of the Declaration, the Charter, Bylaws, and the Rules for the use of the property of the Community or the Association.

9. To contract for the management of the Community and to delegate to such contractor all powers and duties of the Association except those specifically required to be performed by the Association.

10. The objects and purposes set forth in this Article IV of this Charter shall be construed as powers as well as objects and purposes, and the Association shall have and may exercise such powers as if such powers were set forth in full herein.

11. The Association shall have and may exercise all powers as shall enable it to do each and everything necessary, suitable, convenient, expedient or proper for the accomplishment of any or all purposes and the attainment of any or all objects set forth in Article IV.

12. The Association shall have and may exercise all powers set forth in any other Article of this Charter, the Declaration, the Bylaws or the Nonprofit Act.

B. All funds and title of properties acquired by the Association and the proceeds therefrom shall be held in trust for the members in accordance with the provisions of the Declaration and the Bylaws of the Association.

Terms used but not defined in this Charter shall have the meaning subscribed to such terms in the Declaration.

ARTICLE V
INITIAL ADDRESS; REGISTERED OFFICE; REGISTERED AGENT

The initial address for the Association to receive state franchise tax correspondence is 2555 Meridian Blvd., Suite 100, Franklin, Tennessee 37067. The name of its initial registered agent is Meritage Homes of Tennessee, Inc. (Control # 001523142), whose address is 2555 Meridian Blvd., Suite 100, Franklin, Williamson County, Tennessee 37067. The email address for the registered agent is: Kris.Keown@meritagehomes.com.

ARTICLE VI
MEMBERSHIP

The corporation shall have members. The members of the Association shall consist of all of the record owners of Units in the Community. Membership in the Association shall be evidenced by a deed or other instrument establishing a record title to a Unit in the Community recorded in the Register of Deeds Office of Davidson County, Tennessee. Upon such recordation, the Owner Unit designated by such instrument shall become a member of the Association and the membership of the prior Owner shall be terminated.

ARTICLE VII
VOTING RIGHTS

Voting rights of the members of the Association shall be determined as set forth in the Declaration. Notwithstanding the foregoing, cumulative voting is not permitted.

ARTICLE VIII
INCORPORATOR

The name and street address of the incorporator is:

NAME	ADDRESS
Robert D. Burton	1221 Broadway, Suite 2030 Nashville, Tennessee 37203

ARTICLE IX
BOARD OF DIRECTORS

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals. The Board shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors for nonprofit corporations pursuant to the Nonprofit Act. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

NAME	ADDRESS
Kris Keown	2555 Meridian Blvd., Suite 100 Franklin, Tennessee 37067
Casey Keister	2555 Meridian Blvd., Suite 100 Franklin, Tennessee 37067
Shauna Leigh Ford	2555 Meridian Blvd., Suite 100 Franklin, Tennessee 37067

All of the powers and prerogatives of the Association shall be exercised by the initial Board of Directors named above until their successors are elected or appointed in accordance with the Declaration.

ARTICLE X
LIMITATION OF DIRECTOR LIABILITY

A member of the Board of Directors of the Association shall not be personally liable to the Association for monetary damages for any act or omission in his capacity as a Board member, except to the extent otherwise expressly provided by Applicable Law. Any repeal or modification of this Article shall be prospective only, and shall not adversely affect any limitation of the personal liability of a member of the Board of Directors at the time of the repeal or modification.

ARTICLE XI
INDEMNIFICATION

Each person who acts as a member of the Board of Directors, officer or committee member of the Association shall be indemnified by the Association against any costs, expenses and liabilities which may be imposed upon or reasonably incurred by him in connection with any civil or criminal action, suit or proceeding in which he may be named as a party defendant or in which he may be a witness by reason of his being or having been a member of the Board of Directors, officer, or committee member of the Association, or by reason of any action alleged to

have been taken or omitted by him or her in either such capacity. Such indemnification shall be provided in the manner and under the terms, conditions and limitations set forth in the Bylaws of the Association.

ARTICLE XII
DISSOLUTION

Upon the dissolution of the Association, the assets of the Association shall be distributed in accordance with the Nonprofit Act.

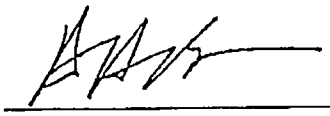
ARTICLE XIII
ACTION WITHOUT MEETING

To the extent permitted under Applicable Law, any action required by law to be taken at any annual or special meeting of the members of the Association, or any action that may be taken at any annual or special meeting of the members of the Association, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the number of members having the total number of votes of the Association necessary to enact the action taken, as determined under the Declaration or this Charter.

ARTICLE XIV
AMENDMENT

The Association reserves the right to amend, alter, change or repeal any provision contained in this Charter by a unanimous vote of the members, and all rights conferred upon officers and directors herein are granted subject to this reservation.

IN WITNESS WHEREOF, this incorporator files this Charter and tenders to the Secretary of State of Tennessee the lawful fees and charges, and prays that this Charter may be examined and approved, and that the Association may be deemed to be incorporated for the purposes herein set out on this 16th day of June, 2025.



Robert D. Burton, Incorporator

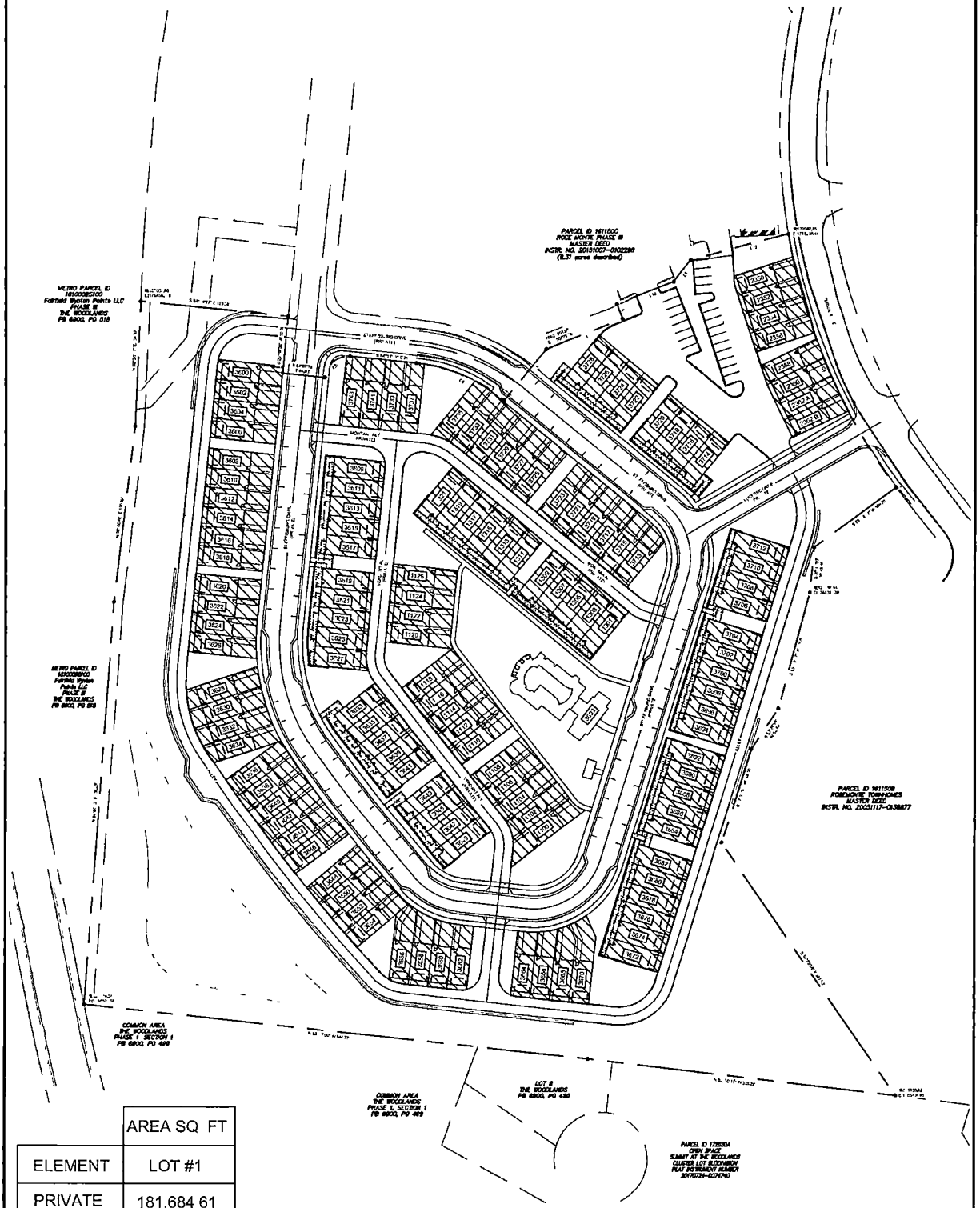
ATTACHMENT 3

HORIZONTAL PROPERTY REGIME PLAT

[SEE ATTACHED]

LINE DATA			
SEGMENT	DIRECTION	LENGTH	RECORD LENGTH
L7	N 38° 29' 19" E	70.57'	(70.57')
L8	N 68° 30' 07" E	88.19'	(88.19')
L9	N 21° 45' 00" W	16.78'	(16.83')
L10	N 68° 34' 57" E	66.04'	(66.00')
L11	N 37° 19' 56" E	29.50'	(29.44')
L12	N 75° 01' 33" E	108.68'	(108.67')

CURVE DATA					
SEGMENT	RADIUS	LENGTH	RECORD LENGTH	DELTA	CHORD
C4	641.43'	298.98'	(298.03')	26° 42' 23"	S 23° 05' 25" E 296.28'
C5	25.00'	39.24'	(39.37')	89° 56' 24"	N 50° 43' 52" E 35.34'
C6	177.00'	104.46'	(104.37')	33° 48' 51"	S 67° 23' 31" E 102.55'



	AREA SQ FT
ELEMENT	LOT #1
PRIVATE	181,684 61
LIMITED COMMON	12,791 98
COMMON	388,410 63
TOTAL AREA	582,887 22

PRIVATE ELEMENTS
LIMITED COMMON ELEMENTS
COMMON ELEMENTS

NORTH

GRAPHIC SCALE IN FEET
0 65 130 260

Kimley»Horn

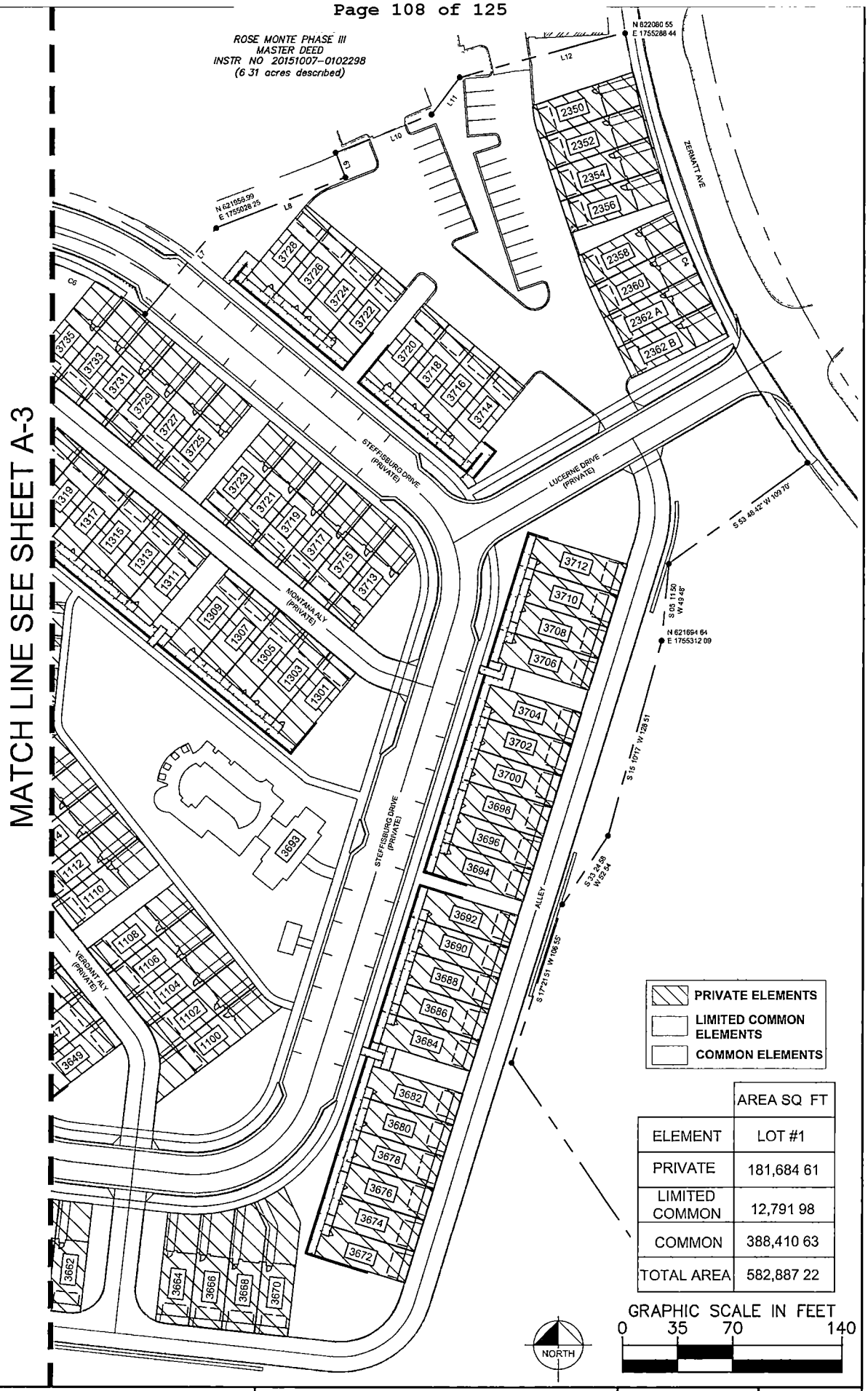
10 Lea Avenue Suite 400 Nashville TN 37210
Main 615 564 2701 | www kimley horn com
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ZERMATT - HPR EXHIBIT

NASHVILLE DAVIDSON COUNTY TENNESSEE

SCALE	1 = 130'
DATE	SEPTEMBER 15
DRAWN BY	JDB
PROJ NO	118166028

EXHIBIT
A-1



	AREA SQ FT
ELEMENT	LOT #1
PRIVATE	181,684 61
LIMITED COMMON	12,791 98
COMMON	388,410 63
TOTAL AREA	582,887 22

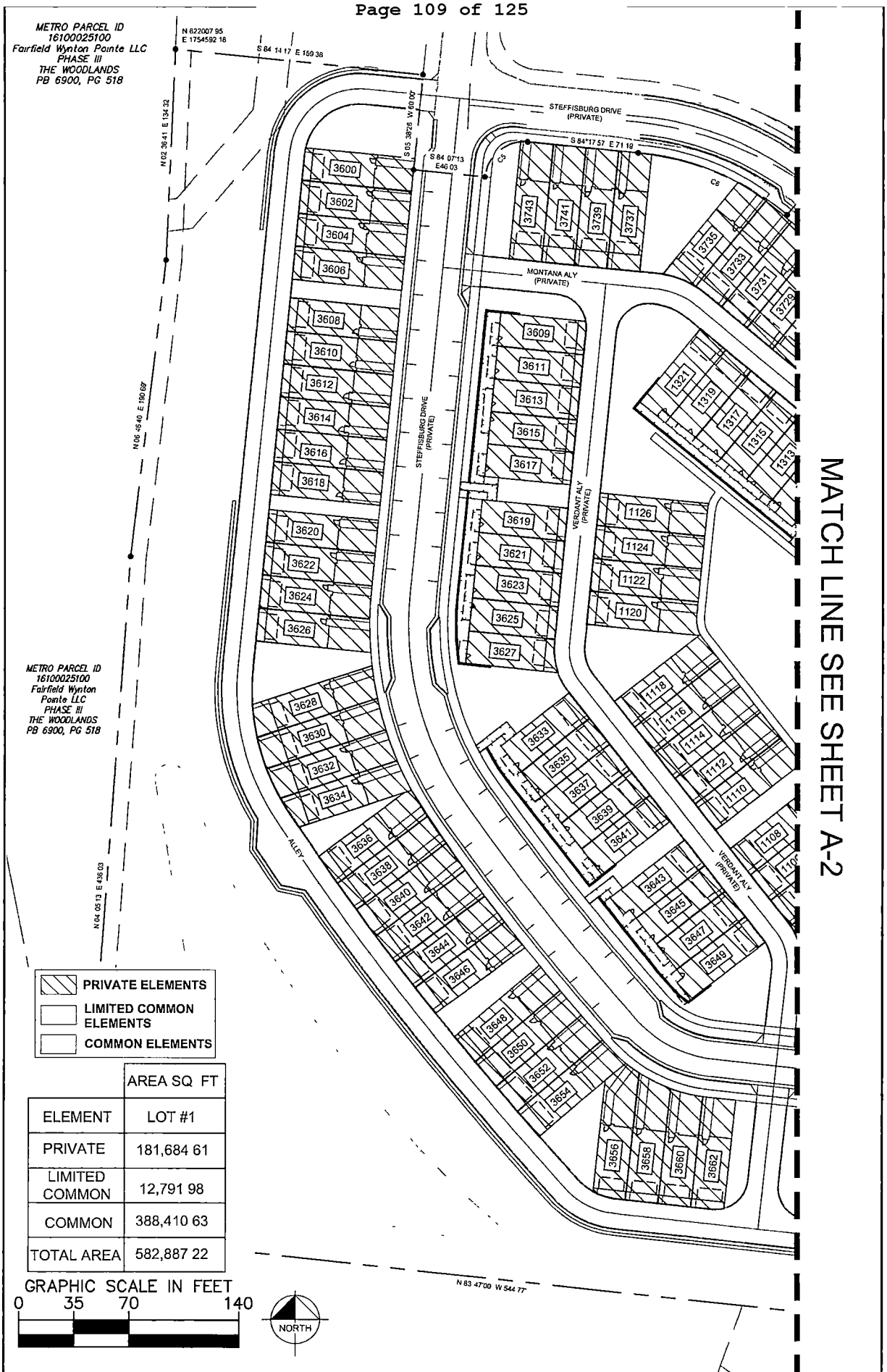
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ZERMATT - HPR EXHIBIT

NASHVILLE DAVIDSON COUNTY TENNESSEE

SCALE	1 = 70
DATE	SEPTEMBER 15
DRAWN BY	JDB
PROJ NO	118166028

EXHIBIT
A-2



	AREA SQ FT
ELEMENT	LOT #1
PRIVATE	181,684 61
LIMITED COMMON	12,791 98
COMMON	388,410 63
TOTAL AREA	582,887 22

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ZERMATT - HPR EXHIBIT

NASHVILLE DAVIDSON COUNTY TENNESSEE

SCALE	1 = 70
DATE	SEPTEMBER 15
DRAWN BY	JDB
PROJ NO	118166028

EXHIBIT
A-3

ATTACHMENT 4
MAINTENANCE RESPONSIBILITY CHART

"All aspects" includes maintenance, repair, and replacement, as needed

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Roof	Replacement of the roof when the Board determines, in its sole and absolute discretion, that the roof needs to be replaced in its entirety The Association will have no obligation to replace shingles, flashing, or other roof components unless associated with roof replacement as determined by the Board in its sole and absolute discretion	All other aspects Any maintenance or replacement of the roof by an Owner must be approved in advance by the Board.
Roof mounted attachments	None	All aspects
Exterior painting, including windows, doors, and garage doors	Exterior painting as determined necessary or required by the Board Such exterior painting may be limited to re-painting on single occurrences when the Board determines the exterior paint needs to be replaced due to the useful life of the painted surfaces, as determined by the Board in its sole and absolute discretion. The Association will have no obligation to provide periodic touch-ups or maintenance of the exterior paint.	Periodic touch-ups and maintenance of the exterior paint Touch-ups or maintenance of exterior painting performed by the Owner must be approved in advance by the Board
Exterior Unit components, including glass and appurtenant hardware.	None	All aspects

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Exterior Unit photocell operated light above garage door, or other similar type lighting.	None	All aspects
Windows, doors, garage doors	None	All aspects
Unit interior, including improvements, fixtures, partition walls and floors within the Unit, and all other improvements within the Property not expressly listed on this Attachment and maintained by the Association.	None	All aspects
Unit foundations, patio slabs, and A/C slabs	None	All aspects
Driveways and sidewalks	None	All aspects
Retaining walls.	None	All aspects
Displays of street numbers on exterior doors or Unit surfaces.	None	All aspects.
Gutters and downspouts	None.	All aspects.
Grounds/landscaping in Unit Yard Area (i e , unfenced turf areas of a Unit) *(See Note 3 below)*	Landscape Services and Irrigation Maintenance Services.	All other aspects
Grounds/landscaping in fenced yard area of a Unit (i e , private backyard)	None	All aspects
Grounds/landscaping in Common Areas.	All aspects	None
Fences and gates around private Unit yards	None.	All aspects

NOTE 1: The components listed in the first column are applicable only if they exist, and may not be construed to create a requirement to have such a component

NOTE 2 If an Owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work after giving required notices to the Owner

NOTE 3: Set forth above is a summary of the maintenance obligations imposed upon the Association and the Owners generally as described more fully in this Declaration. Please note that the information set forth in this Attachment 4 is a summary **only** and is not intended to modify any of the provisions of this Declaration. Accordingly, in the event of a conflict between the summary set forth in this Attachment 4 and any provision set forth in the Declaration above, the provision set forth in the Declaration above will control.

ATTACHMENT 5
GUIDE TO THE ASSOCIATION'S EXAMINATION OF COMMON ELEMENTS

This Guide provides information to assist the Board in conducting an annual examination of the Common Elements for the purpose maintaining replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements maintained by the Association. The annual examination is required by *Section 9.4* of the Declaration and is a necessary prerequisite to establishing sufficient reserves as required by *Section 6.11* of the Declaration. Additional information on conducting the examination may be obtained from the Community Associations Institute and their publication, *The National Reserve Study Standards of the Community Associations Institute* See www.caionline.org. In addition, the Community Associations Institute provides certification for qualified preparers of reserve studies, known as a "Reserve Professionals Designation" (R.S.). Neither this Declaration nor current law requires that the Board engage an individual holding a Reserve Professional Designation for the purpose of conducting the annual examination of the Common Elements. Because laws and practices change over time, the Board should not use this Guide without taking into account applicable changes in law and practice

Developing a Plan

In developing a plan, the age and condition of Common Elements maintained by the Association must be considered The possibility that new types of material, equipment, or maintenance processes associated with the repair and/or maintenance of Common Elements should also be taken into account The individual or company who prepares the examination calculates a suggested annual funding amount and, in doing so, may consider such factors as which components are included, estimated replacement costs of the components, useful lives of the components, inflation, and interest on reserve account balances or other earnings rates. Annual contributions to the replacement fund from annual assessments are based on this examination or reserve study. A reserve study generally includes the following:

- Identification and analysis of each major component of Common Elements maintained by the Association
- Estimates of the remaining useful lives of the components
- Estimates of the costs of replacements or repairs
- A cash flow projection showing anticipated changes in expenditures and contributions over a time period generally ranging between 20 and 30 years

- The "Funding Goal" which is generally one of the following
  - Component Full Funding Attaining, over a period of time, and maintaining, once the initial goal is achieved, a cumulative reserve account cash balance necessary to discharge anticipated expenditures at or near 100 percent; or
  - Threshold Funding Maintaining the reserve account cash balance above a specified dollar or percent funded amount.

Note that Threshold Funding will increase the likelihood that special assessments will be required to fund major repairs and replacements. For example, one study has shown that a Threshold Funding goal of 40 to 50% results in an 11 2% chance that the Association will be unable to fund repairs and replacement projects in the next funding year See "Measuring the Adequacy of Reserves", *Common Ground,* July/August 1997. The same study found that Component Full Funding reduces this likelihood to between 09 and 1.4%

Finding Common Element Component Replacement Information

Common Element component replacement information may be obtained from contractors, suppliers, technical specialists, "Reserve Study" specialist or from using tables in technical manuals on useful lives of various components. As provided in *Section 9.4* of the Declaration, the Board must reevaluate its funding level periodically based upon changes to the Common Elements as well as changes to replacement costs and component conditions The specific components of Common Elements include, but are not limited to roads, recreational facilities, and furniture and equipment owned or maintained by the Association Components covered by maintenance contracts may be excluded if the contracts include maintenance and replacement of the components. The Board must also include within their overall budget a deferred maintenance account for those components requiring periodic maintenance which does not occur annually

ATTACHMENT 6

GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS

This Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association The Board may, from time to time, use this Guide to consider what functions, if any, to delegate to one or more managers, managing agents, employees, or volunteers. Because laws and practices change over time, the Board should not use this Guide without taking account of applicable changes in law and practices.

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
FINANCIAL MANAGEMENT		
To adopt annual budget and levy assessments, per Declaration		
Prepare annual operating budget, periodic operating statements, and year-end statement		
Identify components of the property the Association is required to maintain Estimate remaining useful life of each component. Estimate costs and schedule of major repairs and replacements, and develop replacement reserve schedule. Annually update same.		
Collect assessments and maintain Association accounts		
Pay Association's expenses and taxes		
Obtain annual audit and income tax filing		
Maintain fidelity bond on whomever handles the Association funds		

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
Report annually to Members on financial status of the Association.		
PHYSICAL MANAGEMENT Inspect, maintain, repair, and replace, as needed, all components of the property for which the Association has maintenance responsibility. Contract for services, as needed to operate or maintain the property. Prepare specifications and call for bids for major projects. Coordinate and supervise work on the property, as warranted		
ADMINISTRATIVE MANAGEMENT Receive and respond to correspondence from Owners, and assist in resolving Owners' problems related to the Association. Conduct hearings with Owners to resolve disputes or to enforce the Documents. Obtain and supervise personnel and/or contracts needed to fulfill Association's functions Schedule Association meetings and give Owners timely notice of same. Schedule Board meetings and give directors timely notice of same		

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
Enforce the Documents Maintain insurance and bonds as required by the Documents or Applicable Law, or as customary for similar types of property in the same geographic area Maintain Association books, records, and files. Maintain Association's corporate charter and registered agent & address		
OVERALL FUNCTIONS Promote harmonious relationships within the community. Protect and enhance property values in the community Encourage compliance with Documents and Applicable Law and ordinances. Act as liaison between the community of Owners and governmental, taxing, or regulatory bodies. Protect the Association and the property from loss and damage by lawsuit or otherwise.		

APPENDIX "A"

DECLARANT RESERVATIONS

A.1. General Provisions.

A 1.1. Introduction Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling Declarant-related provisions in this Appendix.

A.1 2 General Reservation and Construction Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any Mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix which Declarant hereby reserves exclusively unto itself and its successors and assigns In case of a conflict between this Appendix "A" and any other Document, this Appendix "A" controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property

A 1 3 Purpose of Development and Declarant Control Periods This Appendix gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly sellout of the Property, which is ultimately for the benefit and protection of Owners and Mortgagees. The "**Development Period**", as specifically defined in *Section 1 17* of the Declaration, means the seven (7) year period beginning on the date this Declaration is Recorded, unless such period is earlier terminated by Declarant's Recordation of a notice of termination, subject to AG's prior written consent so long as AG owns any Unit or other portion of the Property The Declarant Control Period is defined in *Section 1.15* of the Declaration

A.2. Declarant Control Period Reservations. For the benefit and protection of Owners and Mortgagees, and for the purpose of ensuring a complete and orderly build-out and sellout of the Property, Declarant will retain control of the Association, subject to the following

A.2 1. Appointment of Board and Officers Declarant may appoint, remove, and replace each officer or director of the Association, none of whom need be Members or Owners, and each of whom is indemnified by the Association as a "Leader," subject to the following limitation upon expiration or termination of the Declarant Control Period, all Board members must be elected by all Owners, including the Declarant

A 2 2 Obligation for Assessments For each Unit owned by Declarant, Declarant is liable for Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments in the same manner as any Owner. Regarding Regular Assessments, Declarant at Declarant's option may support the Association's budget by either of the following methods. (i) Declarant will pay Regular Assessments on each Declarant owned Unit in the same manner as any Owner, or (ii) Declarant will assume responsibility for the difference between the Association's actual operational expenses as they are paid and the Regular Assessments received from Owners other than Declarant **On the earlier to occur of three (3) years after the first conveyance of a Unit by the Declarant or termination of the Declarant Control Period, Declarant must begin paying Regular Assessments on each Declarant owned Unit.**

A.2 3. Common Elements At or prior to termination of the Declarant Control Period, if title or ownership to any Common Element is capable of being transferred, Declarant will convey title or ownership to the Association. At the time of conveyance, the Common Element will be free of encumbrance except for the property taxes, if any, accruing for the year of conveyance Declarant's conveyance of title or ownership is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners

A.3. Development Period Rights Declarant has the following rights during the Development Period

A 3 1 Annexation. The Regime is subject to expansion by phasing for up to seven (7) years from the date this Declaration is Recorded During the Development Period, Declarant, with the prior written consent of AG so long as AG owns any Unit or other portion of the Property, may annex additional property into the Regime, and subject such property to this Declaration and the jurisdiction of the Association by Recording an amendment.

A 3.2 Creation of Units When created, the Regime includes one-hundred thirty-three (133) Units; however, Declarant reserves the right to create up to and including one-hundred fifty (150) Units upon full buildout of all phases of the project which may include land added to the Regime by the Declarant in accordance with the Declaration. Declarant's right to create Units is for a term of years and does not require that Declarant owns a Unit within the Property at the time or times Declarant exercises its right of creation. The instrument creating additional units must include a revised schedule of allocated interests

A 3.3 Changes to Development Plan During the Development Period, Declarant, with the prior written consent of AG so long as AG owns any Unit or other portion of the Property, may modify the initial development plan to respond to

perceived or actual changes and opportunities in the marketplace Modifications may include, without limitation, the subdivision or combination of Units, changes in the sizes, styles, configurations, materials, and appearances of Units, and Common Elements

A 3.4. Architectural Control. During the Development Period, Declarant has the absolute right of architectural control.

A.3 5 Transfer Fees During the Development Period, Declarant and AG will not pay transfer-related and resale certificate fees.

A 3 6 Fines and Penalties During the Development Period, neither Declarant nor Units owned by Declarant are liable to the Association for late fees, fines, administrative charges, or any other charge that may be considered a penalty.

A 3 7 Statutory Development Rights. As permitted by the Act, Declarant, with the prior written consent of AG so long as AG owns any Unit or other portion of the Property, reserves the following Development Rights which may be exercised during the Development Period (i) to add real property to the Property, (ii) to create and modify Units, General Common Elements, and Limited Common Elements within the Property, (iii) to subdivide Units or convert Units into Common Elements, and (iv) to withdraw from the Property any portion of the real property marked on the Plat as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.

A 3.8. Development Rights Reserved Regarding portions of the real property shown on the Plat as "Development Rights Reserved" or "Subject to Development Rights," if any, Declarant makes no assurances as to whether Declarant will exercise its Development Rights, the order in which portions will be developed, or whether all portions will be developed The exercise of Development Rights as to some portions will not obligate Declarant to exercise them as to other portions.

A 3 9 Amendment During the Development Period, Declarant, with the prior written consent of AG so long as AG owns any Unit or other portion of the Property, may amend this Declaration and the other Documents, without consent of other Owners or any Mortgagee, for the following limited purposes:

(i) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.

(ii) To correct any defects in the execution of this Declaration or the other Documents.

(iii) To add real property to the Property, in the exercise of statutory Development Rights

(iv) To create Units, General Common Elements, and Limited Common Elements within the Property, in the exercise of statutory Development Rights

(v) To subdivide, combine, or reconfigure Units or convert Units into Common Elements, in the exercise of statutory Development Rights

(vi) To withdraw from the Property any portion of the real property marked or noted on the Plat as "Development Rights Reserved" or "Subject to Development Rights" in the exercise of statutory Development Rights.

(vii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents

(viii) To change the name or entity of Declarant

A.4. **Special Declarant Rights**. Declarant reserves the below described Special Declarant Rights, to the maximum extent permitted by Applicable Law, which may be exercised, where applicable, anywhere within the Property during the Development Period. Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right, except the right to appoint and remove Board members and officers of the Association, may be exercised by Declarant until expiration or termination of the Development Period.

(i) The right to complete or make Improvements indicated on the Plat.

(ii) The right to exercise any Development Right permitted by the Act and this Declaration.

(iii) The right to make the Property part of a larger horizontal property regime or planned community.

(iv) The right to use Units owned or leased by Declarant or Common Elements as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property.

(v) For purposes of promoting, identifying, and marketing the Property, Declarant reserves an easement and right to place or install signs, banners,

flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Residents Declarant also reserves the right to sponsor marketing events – such as open houses, MLS tours, and brokers parties – at the Property to promote the sale of Units

(vi) Declarant has an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under the Act and this Declaration.

(vii) The right to appoint or remove any Declarant-appointed officer or director of the Association during Declarant Control Period consistent with the Act

A.5. **Additional Easements and Rights**. Declarant, with the consent of AG, reserves the following easements and rights, exercisable at Declarant's sole discretion, for the duration of the Development Period:

(i) An easement and right to erect, construct, and maintain on and in the Common Elements and Units owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Property.

(ii) The right to sell or lease any Unit owned by Declarant Units owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained in the Documents.

(iii) The right of entry and access to all Units to perform warranty-related work, if any, for the benefit of the Unit being entered or Common Elements Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.

(iv) An easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein Declarant, at Declarant's sole expense, will restore altered Common Elements and Units to conform to the architectural standards of the Property The restoration will be done no later than one hundred and twenty (120) days after termination of the Development Period.

(v) An easement over the entire Property, including the Units, to inspect the Common Elements and all Improvements thereon and related thereto to evaluate the maintenance and condition of the Common Elements

(vi) The right to provide a reasonable means of access and parking for prospective Unit purchasers in connection with the active marketing of Units by Declarant

A.6. **Limitation on Rights as Declarant**. Notwithstanding any other provision contained in this Declaration, as long as Meritage Homes of Tennessee, Inc. is the Declarant, Meritage Homes of Tennessee, Inc. shall not, without the prior written consent of AG, have the right to exercise any of the "Declarant" rights under this Declaration in any manner which will have a material or adverse impact on the Units or other portion of the Property owned by AG.

A.7. **Approval of AG** Notwithstanding any other provision contained herein, any provision requiring the consent of the Declarant to any Recorded document that would affect the Property, including but not limited to additional covenants, easements, replat, or re-subdivision of any portion of the Property, shall also require the prior written consent of AG to any such document as long as AG owns any Unit, other portion of the Property

A.8. **Failure to Obtain AG Approval**. Notwithstanding any other provision, any document which requires AG's consent hereunder, Recorded without AG 's consent shall be deemed void and of no force and effect unless subsequently approved by a written consent signed by AG and Recorded

Attorney's Certification

October 31, 2025

Re: *Zermatt, Davidson County, Tennessee*

I am an attorney licensed to practice in the State of Tennessee. Attached to this Attorney's Certification are all legal documents required by Tenn. Code Ann. § 66-27-101, *et seq.* for the creation of the planned unit development known as Zermatt, including the Charter and corporate bylaws of Zermatt Residential Community, Inc., and the Declaration of Horizontal Property Regime for Zermatt to be recorded with the Davidson County Register of Deeds, and therefore, a planned unit development is created under Tenn. Code Ann.§ 66-27-101, *et seq.* This certification is given for the limited purpose of complying with Tenn. Code Ann. § 66-27-103(b).

Sincerely,

Heath T. Pennington
State Bar No. 037611

State of Texas)
County of Travis)

This instrument was acknowledged before me on October 31, 2025 by Heath Pennington, known to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Notary Public's Signature

(Seal)

Janis Carmen
Notary Public, State of Texas
Notary ID 125087886
My Commission Exp. 10/15/2028

Tennessee Certification of Electronic Document

I, _____, 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 _____ (date of document)

_____
Affiant Signature

_____
Date

State of _____

County of _____

Sworn to and subscribed before me this _____ day of _____, 2_____

_____
Notary's Signature

MY COMMISSION EXPIRES _____

NOTARY'S SEAL