

LAWYERS TITLE INSURANCE CORPORATION

P.O. Box 45023, Jacksonville, Florida 32232-5023

(877)862-9111 FAX (904)564-1602

SCHEDULE A

File No.: 2938543

Commitment No.: 2938543

Loan No.:

1. Effective Date: October 5, 2009 at 08:00 AM

2. Policy or Policies to be issued:

Amount

(a) X Owner's Policy ()

\$ TO BE DETERMINED

Proposed Insured:

A QUALIFIED PURCHASER TO BE DETERMINED

(b) _____ Loan Policy (ALTA Loan Policy (6-17-06))

Proposed Insured:

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple.

4. Title to the Fee Simple estate or interest in the land is at the Effective Date vested in:

River Tower At South Bluff, LLC, a Delaware limited liability company

5. The land referred to in the Commitment is described as follows:

Property situated in Shelby County, Tennessee:

Unit Nos. 206, 704B, 706A, 706B, 708B, 804B, 904A, 904B, 906A, 1004B, 1100, 1104A, 1400 and 1504, in River Tower at South Bluffs, a Condominium, Shelby County, Tennessee, as described in the Declaration of Condominiums fo River Tower at South Bluffs, a Condominium, recorded at Instrument No. 05212447, Register's Office of Shelby County, Tennessee (the "Declaration"), to which reference is hereby made.

Lawyers Title Insurance Corporation

By: Phyllis Massey
Lawyers Title Insurance Corporation

**SCHEDULE B - SECTION I
REQUIREMENTS**

File No.: 2938543

Commitment No.: 2938543

Compliance with the following is required:

1. Instrument(s) necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record, to wit:

Warranty Deed from River Tower at South Bluff, LLC, a Delaware limited liability company to A QUALIFIED PURCHASER TO BE DETERMINED, conveying the Land described in Schedule A, in the Register's Office of Shelby County, Tennessee.
2. Payment of the full consideration to, or for the account of, the grantors or mortgagors.
3. Payment of all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.
4. Furnish properly executed Affidavit to be signed by the seller, and this commitment is subject to such further exceptions or requirements, if any as deemed necessary after examination.
5. Furnish executed Notice of Availability and Waiver of Title Insurance pursuant to T.C.A. Section 56-35-133 and as required by Departmental Regulation 30 (now No. 0781-1-12-10) Department of Insurance and Banking, State of Tennessee and signed by the buyer or mortgagor.
6. Furnish final survey, and this commitment is subject to such further exceptions or requirements, if any, as deemed necessary after examination.
7. Pay the Shelby County Taxes, liens, now due and payable.
8. Furnish satisfactory proof that all assessments due pursuant Declaration of Condominium for River Tower at South Bluffs of record at Instrument No. 05212447, in the aforesaid Register's Office, have been paid.
9. Furnish executed Gap Indemnity Agreement signed by River Tower at South Bluff, LLC, a Delaware limited liability company
10. Furnish the following:
 - (a) a copy of the Operating Agreement for River Tower at South Bluff, LLC, and any amendments, to confirm the identity of those persons authorized to execute the documents necessary for the transaction;
 - (b) Certificate of Existence from the Secretary of State of Delaware and Tennessee;
 - (c) Affidavit from Manager/Member authorizing the transaction and confirming that there are no amendments, modifications, etc. or that any amendments/modifications are attached to the affidavit.
11. Furnish a copy of the partnership agreement and all amendments thereto and other evidence satisfactory to the Company that River Tower Development, L.P. is a valid and subsisting partnership under the laws of the State of Delaware and Tennessee and that all necessary consents, authorizations, resolutions, notices and partnership actions relating to the sale and the execution of and delivery of the Deed and required under applicable law and partnership agreements have been conducted, given or properly waived; Or in the alternative, furnish satisfactory opinion of local counsel in the State of formation that seller is a duly organized and existing partnership under the laws of the state of formation and that the signatory(ies) has the power and authority to execute all documents necessary to properly bind the partnership.
12. Furnish the following:
 - (a) a copy of the Operating Agreement for River Tower Development GP LLC, and any amendments, to confirm the identity of those persons authorized to execute the documents necessary for the transaction;

SCHEDULE B - SECTION I
REQUIREMENTS
(Continued)

File No.: 2938543

Commitment No.: 2938543

- (b) Certificate of Existence from the Secretary of State of Delaware and Tennessee;
- (c) Affidavit from Manager/Member authorizing the transaction and confirming that there are no amendments, modifications, etc. or that any amendments/modifications are attached to the affidavit.

13. The Company reserves the right to make further requirements and/or exceptions upon being furnished the identity of the proposed insured.

NOTE: This Commitment for Title Insurance does not constitute a report of title and is not to be relied upon by the insured(s) or any other party as a title report or the representation of the status of title. Any title search and examination conducted by or for the Company in connection with the issuance of this Commitment for Title Insurance, if any, is solely for the benefit of the Company. The sole liability of the Company and/or its issuing agent hereunder shall be as set forth in the Conditions and Stipulations of this Commitment for Title Insurance. Neither the Company nor its issuing agent shall be liable to the proposed insured(s) or any other party for any claim of alleged negligence, negligent misrepresentation, or any other cause of action in tort in connection with this Commitment for Title Insurance.

END OF SCHEDULE B - SECTION I

**SCHEDULE B - SECTION II
EXCEPTIONS**

File No.: 2938543

Commitment No.: 2938543

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. The rights or claims of parties in possession not shown by the public records.
4. Easements, or claims of easements, not shown by the public records.
5. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Taxes or special assessments which are not shown as existing liens by the public records.
7. Any taxes or assessments not posted on the records of the taxing authority(ies) of which the Land described in Schedule A hereof is subject, including but not limited to: Supplemental, Revised, and/or Corrected Assessments pursuant to T.C.A. Section 67-5-603 et seq. or Back Assessments pursuant to T.C.A. Section 67-1-1001 et seq.; or taxes based on a change in the classification of the insured Land (Roll Back Taxes) pursuant to T.C.A. Section 67-5-1001 et seq.
8. City of Memphis and Shelby County Taxes for the year 2010, not yet liens and not yet due or payable.
9. Subdivision restrictions, building lines and easements of record in Plat Book 29, Page 38 and Plat Book 229, Page 59, in the Register's Office of Shelby County, Tennessee.
10. Deed restrictions of record in Book 5466, Page 339 and Book 5850, Page 285, in the aforesaid Register's Office.
11. Utility, sewer and drainage easement of record at Instrument No. W1 9029, in the aforesaid Register's Office.
12. Terms and conditions of record at Instrument No. W1 9032, in the aforesaid Register's Office.
13. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney, and limitations on title created by the Tennessee Horizontal Property Act, the Tennessee Condominium Act of 2008, or set set forth in Declaration of Condominium for River Tower at South Bluffs, dated December 29, 2005 and recorded December 30, 2005 at Instrument No. 05212447, in the aforesaid Register's Office; in the related Bylaws, in any instrument creating the estate or interest insured by this policy; and in any other allied instrument referred to in any of the instruments aforesaid.
14. Covenants, conditions, restrictions and other terms and provisions contained in Declaration of Covenants, Conditions and Restrictions of record at Instrument No. 07021587, in the aforesaid Register's Office.
15. Rights of tenant(s) in possession under unrecorded leases and/or agreements.

NOTE: The actual value of the estate or interest to be insured must be disclosed to the Company, and subject to approval by the Company, entered as the amount of the policy to be issued. Until the amount of the policy to be issued shall be determined and entered as aforesaid, it is agreed that as between the Company, the applicant for this Commitment, and every person relying on the Commitment, the Company cannot be required to approve any such evaluation in excess of \$100,000.00, and the total liability of the Company on account of this Commitment shall not exceed said amount.

SCHEDULE B - SECTION II
EXCEPTIONS
(Continued)

File No.: 2938543

Commitment No.: 2938543


NOTE: if policy is to be issued in support of a mortgage loan, attention is directed to the fact that the Company can assume no liability under its policy, the closing instructions, or Insured Closing Service for compliance with the requirements of any consumer credit protection or truth in lending law in connection with said mortgage loan.

END OF SCHEDULE B - SECTION II



Tom Leatherwood
Shelby County Register

As evidenced by the instrument number shown below, this document has been recorded as a permanent record in the archives of the Office of the Shelby County Register.

	
05212446	
12/30/2005 - 02:04 PM	
6 PGS : R - WARRANTY DEED	
KAYKEY	369470-5212446
VALUE	11000000.00
MORTGAGE TAX	0.00
TRANSFER TAX	40700.00
RECORDING FEE	30.00
DP FEE	2.00
REGISTER'S FEE	1.00
WALK THRU FEE	0.00
TOTAL AMOUNT	40733.00
TOM LEATHERWOOD	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	

1st

THIS INSTRUMENT PREPARED BY:
John A. Gupton, III, Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
211 Commerce Street, Suite 1000
Nashville, TN 37201

RETURN TO:
LAWYERS TITLE INSURANCE COMPANY
6363 Poplar Ave. - Suite 208
Memphis, TN 38119
File # _____ Attn. R. Scott

SPECIAL WARRANTY DEED

GRANTOR: PROPERTIES II, INC., a Delaware corporation
GRANTEE RIVER TOWER AT SOUTH BLUFF, LLC, a Delaware limited liability company

Address New Owner as follows:	Send Tax Bills To:	Map-Parcel No.
River Tower at South Bluff, LLC 1021 Main Street, Suite 1400 Houston, TX 77002	Same	#2-86-11 #2-86-15 <u>655 Riverside Dr</u>

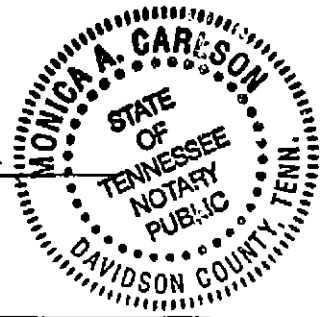
STATE OF TENNESSEE
COUNTY OF DAVIDSON

The actual consideration or value, whichever is greater, for this transfer is \$11,000,000.00.

John A. Gupton, III
Affiant

Subscribed and sworn to before me this the 29th day of December, 2005.

Monica A. Carlson
Notary Public



My Commission Expires: Nov. 25, 2006

The attached Special Warranty Deed conveys the same property conveyed to Properties II, Inc. by deed of record in Instrument No. 03250921, Register's Office for Shelby County, Tennessee

SPECIAL WARRANTY DEED

THE STATE OF TENNESSEE §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF SHELBY §

THAT PROPERTIES II, INC., a Delaware corporation ("Grantor"), whose mailing address is c/o GE Real Estate, 16479 Dallas Parkway, Two Bent Tree Tower, Suite 500, Addison, Texas 75001, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid in cash to Grantor by the Grantee herein named, has GRANTED, BARGAINED, SOLD and CONVEYED, and by these: presents does GRANT, BARGAIN, SELL and CONVEY unto RIVER TOWER AT SOUTH BLUFF, LLC, a Delaware limited liability company ("Grantee"), whose mailing address is 1021 Main Street, Suite 1400, Houston, Texas 77002, that certain real property situated in the County of Shelby, Tennessee, more particularly described on Exhibit A attached hereto and made a part hereof for all purposes ("Property").

TO HAVE AND TO HOLD the Property and all improvements thereon, together with all and singular the rights and appurtenances thereto and in any wise belonging unto the said Grantee, its legal representatives, successors and assigns, forever; and Grantor does hereby bind itself, its legal representatives and successors, to Warrant and Forever Defend all and singular the Property, unto the said Grantee, its legal representatives, successors and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof by, through or under Grantor, but not otherwise.

This conveyance is made and delivered subject to those matters of title set forth on Exhibit B attached hereto and incorporated herein by reference, but only to the extent the same, in fact, do exist and are applicable to the Property.

Grantee, by its acceptance hereof, assumes liability for the payment of all ad valorem taxes and assessments for the Property for the calendar year of the date of this Special Warranty Deed and for all subsequent years.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed on the date of the acknowledgement set forth below, to be effective, however, as of the 29th day of December, 2005.

GRANTOR:

PROPERTIES II, INC.,
a Delaware corporation

By: Bill Dickey
Bill Dickey, Authorized Signatory

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on December 28th, 2005, by Bill Dickey, Authorized Signatory of Properties II, Inc., a Delaware corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of said corporation.

Carolyn L. Sims
Notary Public, State of Texas

CAROLYN L. SIMS
Printed Name of Notary

Commission Expires: 8.22.07

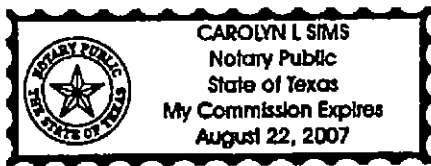


EXHIBIT A
to
Special Warranty Deed

Property Description

BEING THE SAME PROPERTY AS DESCRIBED IN WARRANTY DEED OF RECORD TO MEMPHIS CENTER CITY REVENUE FINANCE CORPORATION DATED 12-30-1987 AND RECORDED IN INSTRUMENT NUMBER AF 1756 AT THE SHELBY COUNTY REGISTERS OFFICE AND BEING LOCATED IN MEMPHIS, TENNESSEE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET CHISEL MARK ON THE SOUTH LINE OF ASHBURN PARK AND ON THE WEST R.O.W. LINE OF RIVERSIDE DRIVE AS WIDENED (82' FROM CENTERLINE), SAID POINT BEING THE NORTHEAST CORNER OF THE PROPERTY DESCRIBED IN WARRANTY DEED OF RECORD IN INSTRUMENT NUMBER AF 1756 AT THE SHELBY COUNTY REGISTERS OFFICE AND ALSO BEING 485.64 FEET NORTH OF THE CENTERLINE OF GEORGIA AVENUE AS MEASURED ALONG THE CENTERLINE OF SAID RIVERSIDE DRIVE:

THENCE S 3°48'51" W ALONG SAID WEST R.O.W. LINE 72.44 FEET TO AN ANGLE POINT;

THENCE S 2°41'07" W ALONG SAID WEST LINE 263.91 FEET TO AN ANGLE POINT;

THENCE S 42°02'53" W ALONG SAID LINE 8.40 FEET TO AN ANGLE POINT;

THENCE S 3°48'51" W ALONG SAID LINE 109.81 FEET TO A SET NAIL AT AN ANGLE POINT;

THENCE S 4°04'51" W ALONG SAID LINE 89.69 FEET TO A SET IRON PIN AT AN ANGLE POINT;

THENCE 4°46'50" W ALONG SAID LINE 85.76 FEET TO A SET IRON PIN AT AN ANGLE POINT;

THENCE S 3°53'14" W ALONG SAID LINE 10.90 FEET TO A FOUND IRON PIN AT AN ANGLE POINT;

THENCE N 85°13'10" W ALONG SAID LINE 0.17 FEET TO AN ANGLE POINT;

THENCE S 4°46'50" W ALONG SAID LINE 43.65 FEET TO A SET IRON PIN AT AN ANGLE POINT;

THENCE S 85°13'10" E ALONG SAID LINE 0.87 FEET TO AN ANGLE POINT;

THENCE S 3°38'05" W ALONG SAID LINE 23.50 FEET TO A SET IRON PIN AT AN ANGLE POINT;

THENCE N 85°13'10" W ALONG SAID LINE 1.34 FEET TO A SET CHISEL MARK AT AN ANGLE POINT;

THENCE S 4°46'50" W ALONG SAID LINE 17.80 FEET TO A SET IRON PIN AT THE NORTHEAST CORNER OF THE PROPERTY DESCRIBED IN INSTRUMENT NUMBER FZ 8876;

THENCE N 85°13'10" W ALONG THE NORTH LINE OF SAID PROPERTY 495.00 FEET TO A SET IRON PIN AT AN ANGLE POINT;

THENCE N 40°13'10" W ALONG SAID NORTH LINE 45.99 FEET TO A SET IRON PIN ON THE EAST LINE OF PHASE I, PARCEL I, OF FOUNDERS POINT OF RECORD IN PLAT BOOK 139 PAGE 51;

THENCE N 4°46'50" E ALONG THE EAST LINE OF SAID PHASE I AND FUTURE PHASE II A DISTANCE OF 364.57 FEET TO A SET IRON PIN AT AN ANGLE POINT;

THENCE N 58°41'14" E ALONG SAID EAST LINE 14.40 FEET TO A SET IRON PIN AT AN ANGLE POINT;

THENCE N 34°21'44" E ALONG SAID EAST LINE 84.86 FEET TO A SET IRON PIN AT AN ANGLE POINT;

THENCE N 57°28'04" E ALONG SAID EAST LINE 89.95 FEET TO A SET IRON PIN AT AN ANGLE POINT;

THENCE N 33°00'16" E ALONG SAID EAST LINE 43.20 FEET TO A SET CHISEL MARK AT AN ANGLE POINT;

THENCE N 47°01'32" E LONG SAID EAST LINE 199.26 FEET TO A SET IRON PIN ON THE SOUTH LLINE OF SAID ASHBURN PARK;

THENCE S 86°17'09" E ALONG SAID SOUTH LINE 239.36 FEET TO THE POINT OF BEGINNING.

CONTAINING 334,221 SQUARE FEET OR 7.6727 ACRES

EXHIBIT B
to
Special Warranty Deed


Permitted Exceptions

1. Taxes for the year 2006, a lien, which are not yet due and payable. Tax Parcel Nos. 2-86-11 and 2-86-15.
2. 65 foot utility, sewer, and drainage easement recorded at Instrument No. W1 9029.
3. Terms and conditions of a temporary curb cut and access agreement of record at Instrument No. W1 9032.
4. Rights of tenants in possession, as tenants only, under unrecorded leases.
5. Restrictions as contained in Book 5466, page 339 and Book 5850, page 285.



Tom Leatherwood
Shelby County Register

As evidenced by the instrument number shown below, this document
has been recorded as a permanent record in the archives of the
Office of the Shelby County Register.

	
07021588	
02/02/2007 - 01:53 PM	
S FGS : E - WARRANTY DEED	
LIR 467765-7021588	
VALUE	2000000.00
MORTGAGE TAX	0.00
TRANSFER TAX	7400.00
RECORDING FEE	30.00
DP FEE	2.00
REGISTER'S FEE	1.00
WALK TECH FEE	0.00
TOTAL AMOUNT	7433.00
TOM LEATHERWOOD	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	

THIS INSTRUMENT PREPARED BY:

John A. Gupton, III, Esq.
Baker, Donelson, Bearman Caldwell & Berkowitz, P.C.
211 Commerce Street, Suite 1000
Nashville, TN 37201

RETURN TO:
LAWYERS TITLE INSURANCE COMPANY
363 Poplar Ave. - Suite 408
Memphis, TN 38119
758141 Attn. R. Scott

ADDRESS NEW OWNER	SEND TAX BILLS TO:	MAP PARCEL
c/o Southland Development Partners Peabody Place, Suite 1325 Memphis, Tennessee 38103	Same	Ward 002 Block 0860 Parcel 00022

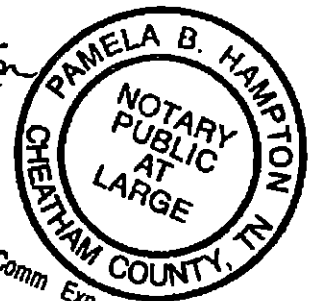
STATE OF TENNESSEE
COUNTY OF DAVIDSON
~~SHELBY~~

The actual consideration or value, whichever is greater, for this transfer is \$2,000,000.00.

[Signature]
Affiant

Subscribed and sworn to before me this the 1st day of February, 2007.

[Signature]
Notary Public



My Commission expires: 10-16-07

SPECIAL WARRANTY DEED

THE STATE OF TENNESSEE §
COUNTY OF SHELBY §

KNOW ALL MEN BY THESE PRESENTS:

THAT RIVER TOWER AT SOUTH BLUFF, LLC, a Delaware limited liability company, a Delaware limited liability company ("Grantor"), whose mailing address is 1021 Main Street, Suite 1400, Houston, Texas 77002, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid in cash to Grantor by the Grantee herein named, has GRANTED, BARGAINED, SOLD and CONVEYED,

and by these: presents does GRANT, BARGAIN, SELL and CONVEY unto RIVER COURT, LLC, a Tennessee limited liability company ("Grantee"), whose mailing address is c/o Southland Development Partners, Peabody Place, Suite 1325, Memphis, Tennessee 38103, that certain real property situated in the County of Shelby, Tennessee, more particularly described on Exhibit A attached hereto and made a part hereof for all purposes ("Property").

TO HAVE AND TO HOLD the Property and all improvements thereon, together with all and singular the rights and appurtenances thereto and in any wise belonging unto the said Grantee, its legal representatives, successors and assigns, forever; and Grantor does hereby bind itself, its legal representatives and successors, to Warrant and Forever Defend all and singular the Property, unto the said Grantee, its legal representatives, successors and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof by, through or under Grantor, but not otherwise.

This conveyance is made and delivered subject to those matters of title set forth on Exhibit B attached hereto and incorporated herein by reference, but only to the extent the same, in fact, do exist and are applicable to the Property.

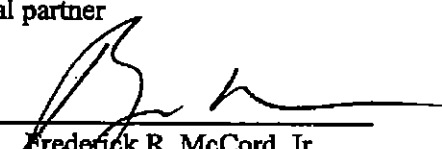
Grantee, by its acceptance hereof, assumes liability for the payment of all ad valorem taxes and assessments for the Property for the calendar year of the date of this Special Warranty Deed and for all subsequent years.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed as of the date of the acknowledgment set forth below, to be effective, however, as of the 31st day of January, 2007.

RIVER TOWER AT SOUTH BLUFF, LLC,
a Delaware limited liability company

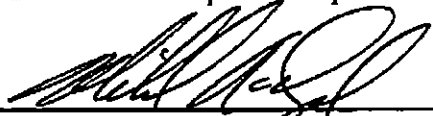
By: River Tower Development, L.P.,
a Delaware limited partnership,
its manager

By: River Tower Development GP, LLC,
a Delaware limited liability company,
its general partner

By: 
Frederick R. McCord, Jr.,
Vice President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on January 26, 2007, by Frederick R. McCord, Jr., Vice President of River Tower Development GP, LLC, a Delaware limited liability company, acting in its capacity as general partner of River Tower Development, L.P., a Delaware limited partnership, acting in its capacity as manager of River Tower at South Bluff, LLC, a Delaware limited liability company, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of said limited liability companies and limited partnership.



Notary Public, State of Texas

Michael A. Boyd

Printed Name of Notary

Commission Expires: 11/28/09

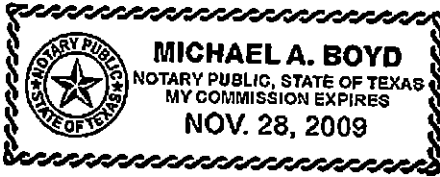


EXHIBIT A

Property Description

BEING PART OF THE SAME PROPERTY AS DESCRIBED IN WARRANTY DEED OF RECORD TO PROPERTIES II, INC. DATED 12-29-2003 AND RECORDED IN INSTRUMENT NUMBER 03250921 AT THE SHELBY COUNTY REGISTERS OFFICE AND BEING LOCATED IN MEMPHIS, TENNESSEE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET 1/2" IRON PIN ON THE WEST LINE OF RIVERSIDE DRIVE AS WIDENED (ROW VARIES), 519.47 FEET SOUTH OF THE SOUTH LINE OF ASHBURN PARK AS MEASURED ALONG SAID WEST LINE OF RIVERSIDE DRIVE;

THENCE S 4°04'51" W ALONG SAID WEST LINE 24.78 FEET TO A SET 1/2" IRON PIN AT AN ANGLE POINT;

THENCE S 4°46'50" W ALONG SAID WEST LINE 85.76 FEET TO A SET 1/2" IRON PIN AT AN ANGLE POINT;

THENCE S 3°53'14" W ALONG SAID WEST LINE 10.90 FEET TO A FOUND 1/2" IRON PIN AT AN ANGLE POINT;

THENCE N 85°13'10" W ALONG SAID WEST LINE 0.17 FEET TO AN ANGLE POINT;

THENCE S 4°46'50" W ALONG SAID WEST LINE 43.65 FEET TO A SET 1/2" IRON PIN AT AN ANGLE POINT;

THENCE S 85°13'10" E ALONG SAID WEST LINE 0.87 FEET TO AN ANGLE POINT;

THENCE S 3°38'05" W ALONG SAID WEST LINE 23.50 FEET TO A SET 1/2" IRON PIN AT AN ANGLE POINT;

THENCE N 85°13'10" W ALONG SAID WEST LINE A DISTANCE OF 1.34 FEET TO A SET CHISEL MARK;

THENCE S 4°46'50" W ALONG SAID WEST LINE 17.80 FEET TO A SET 1/2" IRON PIN AT THE NORTHEAST CORNER OF THE PROPERTY DESCRIBED IN INSTRUMENT NUMBER FZ 8876;

THENCE N 85°13'10" W ALONG THE NORTH LINE OF SAID PROPERTY 495.00 FEET TO A SET 1/2" IRON PIN AT AN ANGLE POINT;

THENCE N 40°13'10" W ALONG SAID NORTH LINE 45.99 FEET TO A SET 1/2" IRON PIN ON THE EAST LINE OF PHASE I, PARCEL I, OF FOUNDERS POINT OF RECORD IN PLAT BOOK 139 PAGE 51;

THENCE N 4°46'50" E ALONG THE EAST LINE OF SAID PHASE I AND FUTURE PHASE II A DISTANCE OF 164.31 FEET TO A SET 1/2" IRON PIN;

THENCE S 86°15'26" E A DISTANCE OF 527.30 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.4299 ACRES MORE OR LESS.

Being a portion of the same property conveyed to River Tower at South Bluff, LLC by Deed of record in Instrument No. 05212446, Register's Office for Shelby County, TN.

EXHIBIT B


List of Permitted Exceptions

1. Declaration of Covenants, Conditions and Restrictions executed by River Tower at South Bluff, LLC, to be recorded in the Register's Office of Shelby County, Tennessee immediately prior to the recording of this Special Warranty Deed.
2. Taxes for the year 2007.
3. 65 foot utility, sewer and drainage easement recorded at Instrument No. W1 9029.
4. Terms and conditions of a temporary curb cut and access agreement of record at Instrument No. W1 9032.
5. Restrictions as contained in Book 5466, Page 339 and Book 5850, Page 285.
6. License for Temporary Use and Access by and between River Tower, LLC, as licensor, and River Tower at South Bluff, LLC, as licensee.
7. All matters shown on Plat of record in Instrument No. 06171733.
8. All matters shown on Plat of record in Instrument No. 06188295.



Tom Leatherwood
Shelby County Register

As evidenced by the instrument number shown below, this document has been recorded as a permanent record in the archives of the Office of the Shelby County Register.

	
05212447	
12/30/2005 - 02:04 PM	
351 PCS : R - SUB RESTRICTION	
KATHY 369470-5212447	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	1755.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	0.00
TOTAL AMOUNT	1757.00
TOM LEATHERWOOD	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	

2nd

RETURN TO:
LAWYERS TITLE INSURANCE COMPANY
6363 Poplar Ave. - Suite 208
Memphis, TN 38119
File # _____ Attn. *R. Scott*

This instrument prepared by
and return to:

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.
211 Commerce Suite 1000
Nashville, Tennessee 37201
Attn: John A. Gupton III

_____ [Space above reserved for recorder use only] _____

DECLARATION OF CONDOMINIUM
FOR
RIVER TOWER AT SOUTH BLUFFS, A CONDOMINIUM

ARTICLE I	DEFINITIONS.....	1
Section 1.1	1
ARTICLE II	NAME.....	5
ARTICLE III	SUBMISSION TO CONDOMINIUM OWNERSHIP AND DESCRIPTION OF CONDOMINIUM.....	5
Section 3.1	Property Submitted to Condominium Form of Ownership.....	5
Section 3.2	Submitted Property Subject to Certain Recorded Encumbrances.....	5
Section 3.3	Description of the Condominium.....	5
ARTICLE IV	RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.....	20
ARTICLE V	OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS; SHARE OF COMMON EXPENSES; VOTING RIGHTS	20
Section 5.1	Ownership Shares	20
Section 5.2	Voting Rights	21
Section 5.3	Common Expense and Common Surplus	21
ARTICLE VI	METHOD OF AMENDMENT OF DECLARATION.....	21
Section 6.1	Amendment to Condominium Documents and Condominium Plat by Developer.....	21
Section 6.2	Amendment By Unit Owners.....	22
Section 6.3	Special Amendment.....	22
Section 6.4	Limitation.....	23
Section 6.5	Procedure	23
ARTICLE VII	ASSOCIATION.....	23
Section 7.1	Powers.....	23
Section 7.2	Membership	24
Section 7.3	Management By Board of Directors	24
Section 7.4	Shares Nontransferable	24
Section 7.5	Binding Effect.....	24
Section 7.6	Conflict Rules	24
Section 7.7	Non-Liability.....	24
Section 7.8	Other Provisions Relating to the Association.....	24
ARTICLE VIII	BY-LAWS.....	25
ARTICLE IX	ASSESSMENTS AND OTHER CHARGES.....	25
Section 9.1	Power to Fix and Determine Assessments.....	25
ARTICLE X	PROVISIONS RELATING TO THE SALE OR RENTAL OF UNITS...32	
Section 10.1	Conveyances, Sales and Transfers.....	32
Section 10.2	Rental or Lease of Units	33
Section 10.3	Continuing Liability.....	33
Section 10.4	Special Provisions Regarding the Sale, Leasing, Mortgaging or Other Alienation by Certain Mortgagees and Developer.....	33
Section 10.5	Time Share.....	34
ARTICLE XI	INSURANCE, RESTORATION OF IMPROVEMENTS AND EMINENT DOMAIN.....	34
Section 11.1	Insurance.....	34
ARTICLE XII	EMINENT DOMAIN.....	40
Section 12.1	Deposit of Certain Condemnation Awards with Insurance Trustee	40

Section 12.2	Determination Whether to Continue Condominium	40
Section 12.3	Disbursement of Funds	40
Section 12.4	Condemnation of Common Elements	41
Section 12.5	Condemnation of a Unit.....	41
ARTICLE XIII	USE AND OCCUPANCY.....	42
Section 13.1	Residential Use	42
ARTICLE XIV	MAINTENANCE AND ALTERATIONS.....	47
Section 14.1	Maintenance and Repairs.....	47
Section 14.2	Alterations and Improvements	49
ARTICLE XV	TERMINATION.....	50
ARTICLE XVI	MANAGEMENT AGREEMENT	51
Section 16.1	Purposes of the Management Agreement.....	51
Section 16.2	Related Parties Not Improper.....	52
Section 16.3	Right of Termination.....	52
Section 16.4	Ratification.....	52
ARTICLE XVII	DISCLAIMER OF CERTAIN WARRANTIES	52
Section 17.1	Warranties Disclaimed.....	52
Section 17.2	Certain Particular Conditions Not Warranted	52
ARTICLE XVIII	ADDITIONAL RIGHTS OF ELIGIBLE MORTGAGE HOLDERS AND OTHER PARTIES	53
Section 18.1	Information to Eligible Mortgage Holders	53
Section 18.2	Additional Rights of Eligible Mortgage Holders.....	53
Section 18.3	Rights of Eligible Mortgage Holders in Respect of Insurance Proceeds...53	
Section 18.4	Consent of Eligible Mortgagees Required for Certain Material Changes 54	
Section 18.5	Notice to First Mortgagees Upon Damage, Etc	55
Section 18.6	Condemnation.....	55
Section 18.7	Deemed Approval by First Mortgagee	55
Section 18.8	Mortgagee Consent Not Unreasonably Withheld, Etc.	55
ARTICLE XIX	MISCELLANEOUS PROVISIONS.....	55
Section 19.1	Binding Effect.....	55
Section 19.2	Non-Ownership of Certain Facilities	55
Section 19.3	Covenants Running With the Submitted Property.....	56
Section 19.4	Severability	56
Section 19.5	Notices	56
Section 19.6	Certain Additional Rights of Developer	57
Section 19.7	Gender; Number.....	57
Section 19.8	Captions	57
Section 19.9	Relation of Declaration to Condominium Act.....	57
Section 19.10	Utility Services to Building	57
Section 19.11	Administrative Fines.....	58

DECLARATION OF CONDOMINIUM

FOR

RIVER TOWER AT SOUTH BLUFFS, A CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM is made by River Tower at South Bluff, LLC, a Delaware limited liability company (the "Developer"), the owner of certain property and improvements located in Memphis, Shelby County, Tennessee, for itself and its successors, grantees and assigns.

WITNESSETH:

WHEREAS, the Developer is the fee simple owner of real property and certain improvements, lying and situated in Memphis, Shelby County, Tennessee, as more particularly set forth in Exhibit "A" attached hereto (the "Submitted Property"), subject to the reservations, restrictions, and easements of record or reserved herein, which property will consist of the easements, improvements and fixtures located on the Submitted Property, described in this Declaration, consisting in part of that certain fourteen (14) story building developed by Developer, all as more particularly described below; and,

WHEREAS, the Developer has developed one hundred fifty-three (153) residential condominium units and related facilities within the aforesaid Submitted Property; and,

WHEREAS, Developer desires to submit such Submitted Property and related improvements and facilities, as expressly described in this Declaration, to condominium ownership pursuant to T.C.A. Section 66-27-101 *et. seq.*, as such statute exists on the date this Declaration is recorded in the Register of Deeds Office for Shelby County, Tennessee;

NOW, THEREFORE, the Developer makes the following declarations:

ARTICLE I

DEFINITIONS

Section 1.1 As used in this Declaration of Condominium and the exhibits hereto, and any amendments thereof, unless the context otherwise requires the following definitions shall prevail:

"Articles of Incorporation" means the Articles of Incorporation of the Association, as the same may be amended from time to time, being more particularly described in Article VII of this Declaration. A copy of the Articles of Incorporation as initially filed with the Secretary of State of Tennessee is attached as Exhibit "C" hereto and made a part hereof.

"Assessment" means a share of the funds required for the payment of Common Expenses which, from time to time, are assessed against each Condominium Unit and the Unit Owner by the Association, and includes the terms "General Assessment," "Special Assessments," "Capital Improvement Assessments," and "Limited Common Element Assessments," as such terms are defined in Article IX of this Declaration.

"Association" means River Tower at South Bluffs Condominium Association, Inc., a Tennessee corporation, the sole entity responsible for the management and operation of the Condominium, including the Common Elements thereof, its successors and assigns.

"Board of Directors" or "Board" means the Board of Directors of the Association, and shall be synonymous with "Board of Administration" as used in the Condominium Act.

"Building" shall mean that certain fourteen (14) level building having an address of 655 Riverside Drive, Memphis, Shelby County, Tennessee, which comprises a portion of the Condominium and is depicted on the Condominium Plat.

"By-Laws" means the By-Laws of the Association, as may be amended from time to time, being more particularly described in Article VII and VIII of this Declaration. A copy of the By-Laws as initially adopted by the Board of Directors of the Association is attached hereto as Exhibit "D" and made a part hereof.

"Common Elements" means the portions of the Condominium Property that are not included within the Units and any other items designated in this Declaration as constituting Common Elements, including those designated as such in Article III, Section F hereinbelow.

"Common Expenses" means all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Condominium Act or as designated as a Common Expense pursuant to this Declaration. The Common Expenses shall be assessed against Units in the Condominium by the Association as authorized by the Condominium Act. For purposes of this Declaration, "Common Expenses" shall also include all reserves required by the Condominium Act or authorized and established by the Association, regardless of when such reserved funds were expended.

"Common Surplus" means the excess of all receipts of the Association from this Condominium, including, but not limited to, assessments, rents, profits and revenue on account of the Common Elements, over and above the amount of Common Expenses of this Condominium.

"Condominium" means River Tower at South Bluffs, A Condominium, which has been submitted to the form of ownership of property under which units are subject to ownership by one or more owners, and appurtenant to each unit is an undivided interest in the common elements, all pursuant to the provision of the Condominium Act.

"Condominium Act" or "Act" means and refers to the Horizontal Property Act for the State of Tennessee being T.C.A. Section 66-27-101 et seq., as amended from time to time.

“Condominium Documents” means this Declaration, and all exhibits annexed hereto, as the same may be amended from time to time. The term “Condominium Documents” also may mean, where applicable, rules and regulations and other documents required pursuant to the Condominium Act as applicable to this Condominium unless the context otherwise requires, and notwithstanding that some or all of such documents or items may or may not be exhibits to the Declaration of Condominium and/or recorded in the public records of Shelby County, Tennessee.

“Condominium Parcel” or “Parcel” means a Unit, together with the undivided share in the Common Elements which is appurtenant to the Unit.

“Condominium Plat” means the Condominium Plat of River Tower at South Bluffs, A Condominium, attached hereto as Exhibit “B” and made a part hereof, recorded in the Register of Deeds Office for Shelby County, Tennessee, pursuant to the Act, with the recording of this document and constituting a part of this Declaration, as the same may be amended or otherwise modified or revised from time to time and recorded as provided for by the Act. The term “Plat” as used in this Declaration refers only to such plat and not to any subdivision plat under applicable Shelby County ordinances of which the Property may be a part from time to time.

“Condominium Property” or “Property” means and includes the improvements, easements and all other property interests that are expressly subjected to condominium ownership pursuant to the terms of this Declaration.

“Condominium Unit” or “Unit” means each of the separate and identified units that are delineated in the Condominium Plat attached to this Declaration as Exhibit “B” and made a part hereof, and which are capable of exclusive ownership as contemplated by the Condominium Act. The physical boundaries of each Unit are as more particularly described in Article III of this Declaration.

“Declaration of Condominium” or “Declaration” means this instrument, as it may be amended from time to time.

“Developer” means River Tower at South Bluff, LLC, a Delaware limited liability company, and its successors and assigns, or any other person who creates the Condominium or offers Condominium Units for sale or lease in the ordinary course of business, but does not include an owner or lessee of a Condominium Unit who has acquired his or her own Unit for his or her own occupancy.

“Eligible Mortgage Holder” means the holder, insurer or guarantor of a first mortgage on a Unit that has been duly recorded in the Register of Deeds Office for Shelby County, Tennessee, who has submitted a written request to the Association for notice with respect to any action that, pursuant to the terms of this Declaration, requires the consent of a specified percentage of Eligible Mortgage Holders, and provides to the Association in such notice its name and address, and the Unit number or address of the Unit on which the Eligible Mortgage Holder holds, insures or guarantees the first mortgage.

"Institutional Mortgagee" means a bank, state or federal savings and loan association, institutional investor, the Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), federal or state agency, credit union, real estate investment trust, insurance company or pension fund authorized to do business in the United States of America, an agency of the United States government, a real estate or mortgage investment trust, or a lender generally recognized in the community as an institutional type lender, in any case holding a mortgage on one or more Condominium Units or all or part of the Condominium Property and the successors or assigns of such entities.

"Laws" means all laws, statutes, ordinances, codes, regulations, and decrees (judicial or administrative), of all federal, state, or local governmental authorities, tribunals, or agencies.

"Limited Common Elements" means and includes those Common Elements that are reserved for the use of a certain Unit or Units to the exclusion of all other Units, as described in the Condominium Documents, including without limitation the descriptions of the Limited Common Elements set forth in Article III, Section G of this Declaration.

"Management Agreement" means and refers to that certain agreement, if any, with the Management Firm for the operation and administration of the Condominium and the management of the Condominium Property.

"Management Firm" means and refers to the firm engaged to provide management services to the Condominium Property and the Common Elements pursuant to the Management Agreement.

"Occupant" means any person or persons, other than the Unit Owner, in possession of a Unit from time to time, including tenants and lessees of a Unit Owner.

"Parking Area" means that certain parking area that is a part of the Condominium Property, as such may be relocated from time to time. The Parking Area contains parking spaces assigned to and available for use by Unit Owners, subject to the provisions of this Declaration and as shown on the Condominium Plat.

"Person" means an individual, corporation, firm, association, partnership, limited liability company, trust or other legal entity.

"Unit" means that part of the Condominium Property which is subject to exclusive ownership and consists of improvements as described in Article III herein below.

"Unit Owner," "Owner of a Unit" or "Parcel Owner" means the record title holder of a Unit within the Condominium but shall not include a Person who is only a Mortgage Holder.

"Utility" or "Utilities" means all public and private utilities of every kind that either are or may hereafter be furnished or furnishable to the Condominium Property, including without limitation potable water, wastewater, irrigation or graywater, electricity, gas, telephone (including voice or data transmission utilities), wastewater and stormwater drainage, cable television and/or installation of a master television antenna system, lighting and illumination, transportation, and

other systems, and includes all facilities necessary or desirable for the transmission, handling or provision of any such Utility or Utilities, including pipes, wires, conduits, cables, lines, wires, panels, boxes, switching equipment, control equipment and structures, and related facilities and equipment of every kind.

Unless the context otherwise requires, all other terms used in this Declaration shall be assumed to have the meaning attributed to such term by the applicable definitional section of the Condominium Act as of the date this Declaration is recorded.

ARTICLE II

NAME

The name by which this Condominium is to be identified is The River Tower at South Bluffs, A Condominium.

ARTICLE III

SUBMISSION TO CONDOMINIUM OWNERSHIP AND DESCRIPTION OF CONDOMINIUM

Section 3.1 Property Submitted to Condominium Form of Ownership. Developer hereby submits the real estate, easements, rights, and improvements described in Exhibit "A" attached hereto and made a part hereof to the condominium form of ownership and use, in the manner provided for in the Condominium Act as it exists on the date of recordation hereof, subject to all easements, reservations, restrictions, prohibitions and limitations of record.

Section 3.2 Submitted Property Subject to Certain Recorded Encumbrances. The Submitted Property is subject to all easements, reservations, limitations, prohibitions, dedications, and restrictions of record.

Section 3.3 Description of the Condominium. The Condominium shall consist of one hundred fifty-three (153) residential Units (as hereinafter described).

A. The Condominium Plat of the Submitted Property, a graphic depiction of the improvements located thereon (including the Units and the Building in which they are located) (the "Graphic Depiction"), and a plot plan and floor plans showing the improvements thereon and identifying each Unit and the Common Elements, their relative locations and approximate dimensions (collectively, the "Plot Plan"), are attached hereto as Exhibit "B" and made a part hereof. Developer is hereby authorized to make such changes in the plans and specifications of all improvements to the Condominium as Developer may deem necessary or desirable; provided, however, that such changes do not conflict with the Condominium Act.

B. The Graphic Depiction and the Condominium Plat, together with this Declaration, are sufficient in detail to identify Units, Common Elements, and Limited Common Elements and their relative location and dimensions.

C. The Condominium is a multi-family residential condominium that exists on the Submitted Property.

D. Types of Units. The Units shall be known and numbered as described in such Exhibit "B."

E. Units and Unit Boundaries. The term "Unit" or "Units" as the case may be, shall mean and include the Units which are designated in Exhibit "B" to this Declaration of Condominium. Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries:

(1) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(a) Upper Boundaries. The horizontal plane of the lowest surface of the unfinished ceiling slab. In a Unit containing a room in which the ceiling is raised above the level of the ceiling in the rest of the Unit, the ceiling slab shall include the vertical slab or wall connecting the raised ceiling with the ceiling of the remaining portion of the Unit, and the upper boundary shall include the place of the unfinished surface of the vertical slab or wall that joins the planes of the lowest surfaces of the unfinished horizontal portions of the ceiling slabs.

(b) Lower Boundaries. The plane of the lowest surfaces of the unfinished floor slab. In a Unit containing a room in which the floor is raised above the level of the floor in the rest of the Unit, the floor slab shall include the vertical slab or wall connecting the raised floor with the floor of the remaining portion of the Unit, and lower boundary shall include the plane of the unfinished surface of the vertical slab or wall that joins the planes of the lowest surfaces of the unfinished horizontal portions of the floor slabs.

(c) Stairwells. Any stairwells within the boundaries of a Unit, as set forth above, or which connect the upper and lower floors of Loft Units shall be a part of the Unit.

(d) Fixtures, Mechanical Systems, Etc. All fixtures, mechanical systems and equipment installed for the sole and exclusive use of the Unit shall be deemed a part of the Unit.

(e) Interior Divisions of Living Space. All spaces, walls, interior partitions, stairways, fixtures and other improvements within the boundaries of a Unit as described above are a part of such Unit. Nonstructural interior walls shall not be considered a boundary of the

Unit. All interior doors adjacent to interior hallways shall be deemed a part of the Unit.

(2) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the exterior walls bounding the Unit (as extended adjacent to the innermost surfaces of the exterior windows their frames), extended to their planar intersections with each other and with the upper and lower boundaries, including all surfaces of the exterior windows (and their frames), but excluding therefrom exterior vents and other adjacent structural elements.

(3) Special Unit Considerations.

(a) The Unit shall not be deemed to include pipes, wires, conduits, or other public or private Utility lines running through the respective Units which are utilized for or serve more than one Unit, which items are hereby made a part of the Common Elements of the Condominium.

(b) All exterior windows (and their window frames) are hereby declared to be a part of the Unit to which they are appurtenant; provided, however, that any maintenance of exterior windows, as well as repair of broken glass or window frames from time to time, shall be performed by the Association in a uniform and attractive manner, at the sole expense of the Unit Owner, which expense the Unit Owner shall pay promptly to the Association upon receipt of a statement for any such repairs.

(c) In connection with the design and construction of each Unit and the Condominium, each Unit Owner except as otherwise provided in Section 3.3 (I) (15)(i), by acceptance of a deed conveying title to a Unit in the Condominium, shall be deemed to have agreed as follows:

1) No modification, decoration or customization of the Unit by buyer shall involve any core drilling or penetration of the floor of the Unit, nor any alteration of the common elements of the Condominium, unless expressly authorized, in writing, in the manner provided in this Declaration of Condominium.

2) To the fullest extent permitted by Tennessee law, Developer makes no warranty with respect to cosmetic conditions affecting a Unit, unless the cosmetic conditions resulted from a defect in an element of the Unit warranted under applicable Tennessee law. "Cosmetic conditions" means aesthetic imperfections that do not affect the working condition or functionality of an item or improvement within a Unit, including

discoloration of floor coverings, wall papers, or window treatments; or minor scratches, cracks, chips, dents, scrapes and caulking imperfections in walls, flooring material, tile, fixtures or mirrors.

following: F. Common Elements. The Common Elements shall consist of the

- (1) The Submitted Property, as herein defined;
- (2) All parts of the Condominium that are not included in the Units;
- (3) Easements through Condominium Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of Utility services, heating and cooling and/or ventilation to the Units and to the Common Elements or the Building;
- (4) Easements of support in every portion of a Unit that contributes to the support of any other Unit or to the Building;
- (5) Cross-easements for ingress, egress, support, maintenance, repair, replacement and Utilities;
- (6) Easements for encroachments by the perimeter walls, ceilings and floors surrounding each Condominium Unit caused by the settlement or movement of the Building or by minor inaccuracies in building or rebuilding which may now exist or hereafter exist, and such easements shall continue until such encroachments no longer exist;
- (7) Installations for the furnishing of Utility services to more than one Unit or to the Common Elements;
- (8) Certain elevators, elevator shafts, elevator lobbies, trash chute, and stairwells, all as shown on the Graphic Depiction and Condominium Plat attached hereto as Exhibit "B" and made a part hereof, specifically excepting from the Common Elements those stairwells that are located within the boundaries of a Unit, if applicable;
- (9) All walkways that are a part of the Condominium Property;
- (10) All fixtures on property owned or held for the common use, benefit and enjoyment of all Unit Owners in the Condominium; and,
- (11) Certain utility infrastructures, paving, retaining walls, the foundation, roof, exterior walls of the Building, balconies, terraces, landscape areas, parking areas and lighting for same, heat exchanges for chilled water

booster pumps, driveway areas, mail room, hallways, lobby, shafts, elevators, elevator machine room, valve room, emergency generator room, electrical rooms, main communications room, mechanical rooms, maintenance room, control room, dumpster, trash chutes, compactor/dumpster trash room, water meter room, concierge desk, fitness room, swimming pool, swimming pool equipment room, club room, limited access gated entry system, loading docks, all lighting in any common elements.

Notwithstanding any provision of this Declaration to the contrary, amendments to the Common Elements may be made as provided in the Condominium Act. Unit Owners shall not do anything within their Units or on the Common Elements that would adversely affect the safety or soundness of the Common Elements or any portion of the Condominium, or the Building.

G. Limited Common Elements.

(1) Description of Limited Common Elements. The Limited Common Elements shall consist of those portions of the Common Elements that are reserved for the use of certain Unit Owners or a certain Unit Owner, to the exclusion of other Unit Owners, and which are either designated as Limited Common Elements on the materials depicting the Condominium in Exhibit "B" attached hereto or are otherwise identified as Limited Common Elements in this Declaration. Such Limited Common Elements shall include, without limitation, the following items:

(a) The perpetual, exclusive easement to use the area of the exterior windows and doors adjacent to each Unit, and as more particularly described in the Graphic Depiction and Condominium Plat attached hereto as Exhibit "B" and made a part hereof, which easement shall be limited to the Owner of the Unit to which such windows and doors are attached;

(b) The mailbox assigned to a particular Unit that is located within the Condominium; provided, however, that the mailbox shall not be replaced, altered or changed in any manner except in accordance with the color, style, design and quality of mailbox required by the Rules and Regulations of the Association;

(c) Light and electrical fixtures outside the Unit or attached to the exterior wall of the Unit and which solely serve such Unit.

(d) The hallways, elevator lobbies, and service elevator vestibules on residential floors, as more specifically shown on the Plat, are assigned as Limited Common Elements to the Units located on the floor upon which such hallways, elevator lobbies, and vestibules are located;

(e) The portion of the Common Elements on which there is located any portion of the air conditioning or heating system exclusively serving a particular Unit or Units is assigned as a Limited Common Element to the Unit or Units so served;

(f) Any utility meter which serves only one (1) Unit is assigned as a Limited Common Element to the Unit so served;

(g) A Unit may be assigned one (1) or more storage spaces, which are shown on Exhibit "B" attached hereto and incorporated herein by this reference and shown on the Plat as a Limited Common Element assigned to the Unit. Storage spaces, except as otherwise provided in an Owner's purchase agreement, may be initially assigned or reassigned by amendment to this Master Deed as provided in subparagraphs (2) and (3) below.

(h) A Unit may be assigned one (1) or more parking spaces, which are shown on Exhibit "B" attached hereto and incorporated herein by reference as a Limited Common Element assigned to the Unit. Parking spaces, except as otherwise provided in an Owner's purchase agreement, may be initially assigned or reassigned by amendment to this Master Deed as provided in subparagraphs (2) and (3) below.

(i) A balcony or a terrace attached to and exclusively serving a Unit, as more specifically shown on the Plat, is assigned as a Limited Common Element to the Unit so served;

(2) The Association's Board of Directors, without need for a membership vote, is hereby authorized to assign and to reassign Limited Common Elements and Common Elements not previously assigned, provided that any such assignment or reassignment shall be made in accordance with the Act. A Common Element not previously assigned as a Limited Common Element may be so assigned and a Limited Common Element may be reassigned by the Board, without the need for a vote of the Association, upon written application to the Association by the Owner or Owners for whose exclusive use such Common Element is requested or whose use of the Limited Common Element previously assigned is directly affected. Upon such application, the Association shall prepare and execute an amendment to the Master Deed assigning the Common Element as a Limited Common Element or reassigning the Limited Common Element, which amendment shall be executed by the Owner or Owners making such application. For so long as Developer owns a Unit primarily for the purpose of sale, an amendment to assign a Common Element, not previously assigned as a Limited Common Element shall be executed by the officers of the Association, if the request is made by Developer. The Board has the right to approve or disapprove any such request may by any Person other than Developer.

(3) For so long as Developer owns any Unit primarily for the purpose of sale, Developer shall have the right to sell to Owners one (1) or more parking spaces and storage spaces to be assigned as Limited Common Elements pursuant to subparagraphs (1) and (2) above. The proceeds of the sale of parking spaces and storage spaces as Limited Common Elements shall belong to Developer.

The use and enjoyment of the Limited Common Elements shall be in accordance with the terms and provisions of this Declaration, the Articles, the By-Laws and any rules and regulations promulgated by the Association from time to time.

(4) Responsibilities of Unit Owners. Subject to the provisions of Section G(1) above, any maintenance, repair or replacement relating to Limited Common Elements shall be performed by the Association, at such Unit Owner's sole cost and expense, unless the contrary is expressly provided by this Declaration. Additionally,

(a) Each Unit Owner shall also be responsible for the cost of replacing the necessary light bulbs for the foregoing light fixtures with the same color and bulb wattage as initially installed by Developer, or as otherwise approved by the Association.

(b) Each Unit Owner shall be solely responsible for the cost of maintaining all portions of the Unit intrusion system serving the Unit alone, including without limitation, all electrical lines and other facilities.

(c) In addition to any other rights of the Association set forth in this Declaration, should any maintenance, repair or replacement of a portion of the Limited Common Elements be necessary or desirable from time to time, then the Association shall have the right to perform the same for the account of the Unit Owner. In such event, the Association shall have the right to a lien upon the Unit on the same basis as a lien for assessments as set forth in this Declaration, to secure payment of all sums expended, together with interest thereon at the highest lawful rate costs and attorneys fees. The Association shall also have the right to direct the levy of an administrative fine against the Owner of the Unit, but only to the extent permitted by Article XIX.

H. Insurance. Each Unit Owner shall be solely responsible for insuring any and all equipment, machinery, fixtures, furniture or the like installed or placed upon or within the Limited Common Elements appurtenant to the Unit, as well as any other improvements located within such Limited Common Elements, and the Association shall not have any duty or obligation to do so. Notwithstanding anything contained in the foregoing to the contrary, the Association shall have the sole obligation of maintaining adequate insurance to protect the Association, the Association property, the Common Elements and the Condominium Property required to be insured by the Association pursuant to the terms of this Declaration or by law.

I. Easements. In addition to any other easements created under the Act or the terms of this Declaration, the following easements are expressly created, granted and reserved:

(1) Unit Owner Parking. Each Unit Owner shall have the right to use at least one (1) parking space in the Parking Area assigned to each one bedroom Unit, two (2) parking spaces assigned to each two bedroom Unit, and two (2) parking spaces assigned to each three bedroom Unit, subject to the following terms, provisions and conditions:

(a) Such parking spaces may be assigned by the Developer to Unit Owners as long as the Developer owns any Units in the Condominium; provided, however, that the Developer shall assign parking spaces so as to provide the right to use a minimum of one (1) parking space to each one bedroom Unit, two (2) parking spaces to each two bedroom Unit, and two (2) parking spaces assigned to each three bedroom Unit. Each such parking space shall, upon assignment, become an appurtenant to the Unit to which it is assigned. Additional parking spaces may be provided by Developer and may be assigned, for additional consideration, in the Developer's sole and absolute discretion, as an additional appurtenance to the Unit to which it is assigned.

(b) The assignment of parking spaces as herein contemplated shall not be recorded in the public or official records of any county, or otherwise made a matter of public record, but shall be evidenced by book entry (which may be printed, computerized or otherwise maintained in any other reasonable media) on the books and records of the Association. Designation of the right to use parking spaces assigned to a Unit Owner may be made by an unrecorded written assignment. The Developer may make an additional charge or increase to the purchase price of a Unit in consideration for designating the right to use one or more parking space(s).

Subsequent to such assignment of parking spaces to a Unit, the Association reserves the right to reassign or change the Unit Owner's parking spaces upon notice thereof to such Unit Owner. A Unit Owner may transfer or assign use of the parking spaces assigned to the Unit Owner; provided, however, that such assignment is to another member of the Association and the Unit Owner delivers written notice of such transfer to the Association. A conveyance of the Unit shall also transfer with it, as an appurtenance to such Unit, the right to use the designated parking spaces, if any, that has not been transferred or assigned by the Unit Owner to any other Unit Owner without the necessity of reference

to or description of the parking spaces in the instrument of conveyance.

(2) Services and Utilities. Non-exclusive easements are hereby reserved unto the Developer, its successors and assigns, and also granted to the respective Utility providers from time to time, on, over, under, across and through the Common Elements and Limited Common Elements of the Condominium, to such extent as may be required for the provision of services and Utilities to all of the Condominium Property and the Building (whether or not included in the Condominium), including, but not limited to, all Utility services (whether public or private), the complete operation of any services or facilities which may be provided by the Developer or the Association, their respective successors or assigns, or any public or private Utility company to serve the Condominium or the Building. The reservation and grant of easement includes (i) easements over, under, across and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of Utility and other services to the Units, Common Elements and Limited Common Elements, and (ii) the right to construct or install all necessary facilities or equipment upon the Condominium Property and to enter thereon to maintain, repair, service, replace, or enlarge the same. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of any Utility, or other service facilities or the use of these easements. The Association has the irrevocable right to access of each Unit during reasonable hours, when necessary, to maintain, repair or replace those items and areas, as detailed in this Declaration or as contemplated hereunder, for which the Association is responsible, and to remove any improvements interfering with or impairing such facilities or easements herein reserve, pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.

(3) Encroachments. In the event that any permitted improvements within a Unit, or any portion of the Common Elements or Limited Common Elements shall encroach upon any other Unit, or the Common Elements or Limited Common Elements for any reason except the intentional or negligent act of the Unit Owner, then an easement shall exist to the extent of such encroachment so long as the same shall exist. The foregoing easement for encroachments shall include, without limitation, any encroachment occurring by reason of construction or reconstruction of improvements after casualty or condemnation, settling or shifting of any improvements, any addition, alteration or repair to the Common Elements or Limited Common Elements made with the consent of the Association. Any such easement for encroachments shall also include an easement for the maintenance and use of encroaching improvements in favor of the Unit Owners, their successors and assigns.

(4) Support. An easement of support in favor of all Unit Owners, their successors and assigns, shall burden every portion of a Unit contributing to the

support of the Building or an adjacent Condominium Unit, Common Elements or Limited Common Elements.

(5) Ingress and Egress. A non-exclusive perpetual easement shall exist, in favor of each Unit Owner and Occupant, their families, guests and invitees, for pedestrian traffic over, through and across the Common Elements intended for such purposes from time to time; provided, however, that under no circumstances shall any pedestrian traffic be allowed over or through any Unit (except for pedestrian traffic by the Unit Owner and such Unit Owner's family and invitees). A non-exclusive easement shall exist in favor of each Unit Owner and Occupant, their families, guests and invitees, for purposes of vehicular and pedestrian access (but not cross-parking) on, over and across the drive aisles located in the Parking Area, in order to access the parking spaces that have been assigned to the Unit Owner as provided in Article III, Section 3.4 above.

(6) Drainage. An easement shall exist over, under and through the Condominium Property as may be necessary for drainage and for the construction, repair, maintenance and operation of drainage facilities for the benefit of the Condominium Property; provided, however, that any such activities shall be conducted in conformity to the construction plans and all governmental approvals for the Building.

(7) Construction of Improvements. Easements shall exist in favor of Developer over the Condominium Property for ingress and egress, and for such purposes of constructing, equipping, fixturing and furnishing of the Condominium Property, including construction, maintenance, operation and the like of the Condominium Property, its Units, Common Elements and Limited Common Elements. Developer shall also have an easement over, under, across, in and through such property as may be required by the Developer in connection with the completion of any contemplated improvements in the Building and the sale of Units therein, and in the Parking Area so long as Developer owns any Unit within the Condominium or has any rights to construct additions to the Condominium or repair, maintain or replace any of the Condominium Property. Neither the Unit Owners nor the Association, nor their use of the Condominium Property, shall interfere in any way with the Developer's completion and sale of Units located within the Condominium.

(8) Sales and Management Activities. Until such time as the Developer has conveyed all Units to third parties, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for Units models; sales, management and construction offices; to show model Units and the Common Elements to prospective purchasers and, if applicable, tenants of Units; and to erect on the Condominium Property signs, banners, flags and other promotional material to advertise Units for sale or lease. In addition, until such time as the Developer has conveyed all Units to third

parties, Developer shall have the right to permit the Management Firm to utilize an office located within the Building in order to perform the services required of it pursuant to the Management Agreement.

(9) Condominium Plat. All easements described or shown on the Condominium Plat.

(10) Developer Activities. Until such time as Developer completes and sells all of the Units in the Condominium, the Developer reserves the right to prohibit access to any portion of the Common Elements of the Condominium Property, or uncompleted Units, to any of the Occupants of the Condominium and to utilize various portions of the Common Elements or Units in connection with such construction and development. No Unit Owner or such Owner's invitees shall in any way interfere with or hamper the Developer, its employees, successors or assigns, in connection with such construction. Thereafter, during such time as the Developer, its successors or assigns, owns any Unit within the Building and is carrying on any business in connection therewith, including the selling, renting or leasing of such Unit or Units, the Unit Owners and their invitees shall in no way interfere with such activities or prevent access to such Units by Developer, its employees, agents, contractors, successors, or assigns.

(11) Association Easement. A perpetual, non-exclusive easement is hereby granted to the Association, its successors and assigns over, under, across and through the Condominium Property for the purpose of permitting the Association to perform its obligations hereunder. Such easement shall permit access to Units upon reasonable prior notice (which may be written, telephonic, or any other reasonable notice), except that no notice shall be required for access to a Unit in the event of any emergency. A Unit Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of Utility, or the use of any of the foregoing easements. The Association shall have the irrevocable right of access to each Unit during reasonable hours, when necessary to maintain, repair, or replace those items and areas for which the Association is responsible, and to remove any improvements interfering with or impairing such facilities or easements herein reserved, pursuant to this Declaration, or as necessary to prevent damage to the Common Elements or to any Unit or Units. Whenever in this Section or elsewhere in this Declaration an easement is granted or reserved to any party, such easement shall also benefit such party's successors, grantees, assigns, agents, employees, licensees, and guests. All easements referred to herein shall be non-exclusive easements. The Association shall have the right to (i) grant and declare additional easements over, upon, under and/or across the Common Elements in favor of Unit Owners and Occupants, their families, guests and invitees, in favor of any other person, entity, public or quasi-public authority or Utility company, or (ii) modify, relocate, abandon or terminate existing easements within or outside of the Condominium in favor of the Association and/or the Unit Owners and Occupants

of the Condominium and their families, guests and invitees, or in favor of any person, entity, public or quasi public authority or Utility company, as the Association may deem desirable for the proper operation and maintenance of the Condominium, or any portion thereof, or for the health, safety or welfare of the Unit Owners, or for any other reason or purpose. So long as such additional easements, or the modification, relocation or abandonment of existing easements, will not unreasonably and adversely interfere with the use of the Units for residential dwelling and other purposes permitted by this Declaration, no joinder of any Unit Owner or any mortgagee of any Unit shall be required, or, if the same would unreasonably and adversely interfere with the use of any Condominium Unit for dwelling or such other purposes, only the joinder of the Unit Owners and Eligible Mortgage Holders of the Units so affected will be required. To the extent required, all Unit Owners hereby irrevocably appoint the Association as their attorney-in-fact for the foregoing purposes.

(12) General. Easements shall exist over, under, across, in and through the Condominium Property for the purposes of the Developer and Association to carry out their rights and duties, expressed or implied, pursuant to this Declaration and its exhibits, and to facilitate such other actions by appropriate parties as may be reasonably necessary to further the development of the Condominium and the Building.

(13) Easements To Benefit Condominiums. The Submitted Property being submitted to condominium ownership is subject to and benefited by certain ingress, egress, utility, drainage, parking, trash disposal and support easements which have been granted for the benefit of the Condominium, including without limitation the following:

(a) Perpetual, exclusive easements and rights for vehicular and pedestrian access, ingress and egress to and from the Condominium, over, across and through the Parking Area, and to the use of the Condominium trash chutes and Utility shafts, all as depicted on the Graphic Depiction and Condominium Plat attached hereto as Exhibit "B" and made a part hereof.

(b) Perpetual, non-exclusive easements for ingress and egress through the exit stairwells contained within the Building;

(c) Perpetual, non-exclusive easements for vehicular and pedestrian access over drive aisles, walkways and sidewalks in the Building that are designed, constructed and intended for common use purposes from time to time.

(14) No Public Rights; Additional Rights. No right shall ever accrue to the public as to the aforesaid easements referred to in the preceding paragraphs.

Until such time as control of the Association has been turned over to the Unit Owners other than Developer, (i) the foregoing easements shall be subject to such additional easements as the Developer may hereafter deem necessary, and (ii) the Developer shall have the right, in its sole and absolute discretion, to grant such additional easements over, upon, across and under all easement areas which may be within or outside of the Condominium as it deems necessary, and the consent of no other party shall be required. Notwithstanding the foregoing, until such time as control of the Association has been turned over to the Unit Owners other than Developer the Developer may convey or dedicate to public use any easement granted by this Declaration, in Developer's sole and absolute discretion.

(15) Special Rights and Rights to Grant Easements.

(a) Reservation by Developer. Developer hereby reserves unto itself, and its successors and assigns, for the express use and benefit of all portions of the Condominium Property and the Building, non-exclusive easements over, under and through the Common Elements and Limited Common Elements for the construction, maintenance, use and operation of all Utilities, including the construction, maintenance, use and operation of equipment, conduits, pipes, lines and similar installations servicing the Condominium Property, together with the power to relocate any such existing easements in any portion of the Condominium Property, provided that such easements or the relocation of easements will not prevent or unreasonably interfere with the reasonable use of the Units for residential purposes and other purposes permitted by this Declaration.

(b) Grants by Developer. Additionally, Developer shall have the right to grant easements over the Condominium Property, specifically including, but not limited to granting non-exclusive easements to vendors and contractors. Developer shall be entitled to retain any and all commissions, fees and compensation from any such vendor or contractor for such easements, and the Association shall have no right of contribution to such commissions, fees, or compensation for a period of twenty-four (24) months after Developer sells its last unit subject to the sole right of Developer to extend the period of no contribution for any additional period of twelve (12) months. Upon the expiration of Developer's right to such commissions, fees or compensation, all future commissions, fees or compensation shall be payable to and the property of the Association.

(c) Roof Easements. Furthermore, Developer shall have an exclusive, and irrevocable right and license for itself, its agents, successors and assigns to use, sell, lease or assign any space on the roof of the Building, for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of telecommunication antennae and equipment, and signage for any lawful purpose or purposes

for a period of twenty-four (24) months after Developer sells its last unit subject to the sole right of Developer to extend the period for an additional twelve (12) months. Developer shall have a non-exclusive, perpetual and irrevocable easement over the roof areas to exercise its rights set forth above. Without limitation, this easement shall include the right to construct, install, use, maintain, repair, replace, improve, remove and operate any type of telecommunication antennae and equipment and signage on the roof of the Building. In addition, Developer shall have a non-exclusive, perpetual and irrevocable easement over other portions of the Condominium for access to and from such roof areas and to construct, install, use, maintain, repair, replace, improve, remove and operate any Utility lines servicing such telecommunication equipment or signage. The Association agrees to indemnify Developer for any damage or destruction caused to the property of Association in the exercise of any easement right granted in this Declaration. The Developer shall collect and retain any and all income received from the exercise of its rights under the provisions of this subsection for a period not to exceed twenty-four (24) months after Developer sells its last unit subject to the right of Developer's to extend the period for an additional twelve (12) months. From and after the expiration of Developer's rights, all income derived from the use of the roof shall be paid to and the property of the Association.

(d) Utility Service Easements. Developer hereby reserves unto itself and its successors and its assigns, and grants to the Association, with the power to assign, non-exclusive easements over, under, upon and through the Condominium Property for the purposes of access to, constructing or maintaining, improvements upon, providing Utility services to or across, or providing drainage to or from the Condominium Property, any other property which may become part of the Condominium Property pursuant to this Declaration, or any other property adjacent to the Condominium Property.

(e) Other Facility Easements. Developer hereby reserves the right to install all lines, pipes and facilities throughout the Condominium Property as may be needed for the use of the Units individually and/or collectively from time to time. Developer shall assume all costs associated with such installations. Subsequent to installation, unless otherwise provided and agreed to by the affected Unit Owner or Owners, the Association shall be responsible for the maintenance of such lines, pipes and facilities.

(f) Warranty Obligations. For as long as the Developer remains liable under any warranty, whether statutory, expressed, or implied, for any act or omission in the development of the Condominium, or in the sale or marketing thereof, the Developer shall have the right to

enter on the Condominium Property, and to take all actions necessary or convenient for the purpose of inspecting, testing, surveying, to determine the actions needed to fulfill any warranty or to determine the extent of the warranty, and to take those actions necessary to fulfill the Developer's responsibilities under the warranty.

(g) Right of Assignment. Developer hereby reserves the right to assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of the Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board or the Association upon the transfer of control of the Association. Any assignment of Developer rights shall be evidenced by an instrument recorded with the formalities of a deed in the public records of Shelby County, Tennessee.

(h) Incidental Damage. Any damage to any Unit caused by, or as a result of, the carrying out of the maintenance responsibilities of the Association or another Unit Owner, or the negligence thereof, shall be repaired promptly by the Association as a Common Expense, or the Unit Owner, as the case may be. Any damage to any part of the Common Elements caused by or the result of any intentional act of a Unit Owner, the Unit Owner's family, agents, contractors, invitees, licensees or tenants, or by such Unit Owner in carrying out his maintenance responsibilities, if any, shall be repaired promptly at the expense of such Unit Owner.

(i) Combination of Multiple Units. A Unit may be combined with any laterally or vertically adjacent Unit or Units subject to the prior written consent of Developer or the Association as appropriate after review and approval of all such plans and specifications for such combinations. Developer shall have the right without exception or approval of Unit Owners or the Association to combine any laterally or vertically adjacent Unit or Units.

(j) Shared Use Arrangements. Developer and the Association shall have the right to enter into shared use agreements with respect to certain portions of the Common Elements, including, but not limited to, the swimming pool, the fitness center, and the club room, with adjoining property owners.

ARTICLE IV

RESTRAINT UPON SEPARATION AND PARTITION
OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

The undivided share in the Common Elements, Limited Common Elements and Common Surplus and the exclusive right to use all appurtenant Limited Common Elements, shall not be separated from the Unit and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all appurtenant Limited Common Elements, appurtenant to a Unit, shall remain undivided and cannot be conveyed or encumbered, except together with such Unit. No Unit Owner shall bring, or have any right to bring, any action for partition or division of the Common Elements, Limited Common Elements, or the Condominium Property except as provided in this Declaration with respect to a termination of the Condominium.

ARTICLE V

OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS;
SHARE OF COMMON EXPENSES; VOTING RIGHTS

Section 5.1 Ownership Shares. The undivided share in the Common Elements and the Common Surplus which are appurtenant to each Unit, as well as the undivided share of the Common Expenses to be paid with respect to each Unit, shall be computed on the following basis:

(1) Calculation of Interest. The allocation of percentage shares in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit is set forth in Exhibit "E" as attached hereto and made a part hereof. The allocation of percentage shares has been established by the Developer in the following manner:

(a) The approximate area of each Unit has been measured in square feet based upon the interior surface of the walls bounding the Unit (the "Unit Area").

(b) The total area of all Units has been computed and is hereinafter referred to as the "Total Unit Area."

(c) The Total Unit Area has been divided into the Unit Area of each Unit to determine the allocation of percentage shares for each Unit as set forth on Exhibit "E" to this Declaration.

(2) Acceptance. The foregoing methods of calculation were undertaken in order to establish a fair and equitable method of allocating assessment percentages to Units within the Condominium and every purchaser of

a Unit, whether from the Developer or otherwise, hereby agrees to be bound by such calculations and hereby irrevocably waives the right to assert that the formula used or the measurements made were unfair, inequitable, or otherwise in error.

Section 5.2 Voting Rights. Each Owner of a Unit shall be a member of the Association and shall be entitled to one (1) vote, which shall be cast by the Owner in accordance with the provisions of the By-Laws and Articles of the Association. The total number of votes shall be equal to the total number of Units in the Condominium. Membership in the Association shall automatically terminate upon the termination of ownership of a Condominium Parcel, and the subsequent Unit Owner taking title shall automatically be entitled to such membership.

Section 5.3 Common Expense and Common Surplus. The Common Expenses of the Condominium shall be determined and shared by the Unit Owners, as specified and set forth in this Declaration and applicable exhibits hereto, except as may otherwise be provided by applicable Tennessee law. The percentage interest in Common Expenses and Assessments is set forth in this Article above. Any Common Surplus of the Association shall be owned by each of the Unit Owners in the same proportion as their ownership interest in the Common Elements.

ARTICLE VI

METHOD OF AMENDMENT OF DECLARATION

Section 6.1 Amendment to Condominium Documents and Condominium Plat by Developer. The Developer reserves the right to make whatever changes it may deem necessary in the Condominium Documents and/or the Condominium Plat so that they more completely and accurately indicate graphically the Units, Common Elements and Limited Common Elements of the Condominium as they exist in fact. Any such amendment reflecting any such changes need only be executed by the Developer; provided, however, that no such amendment approved by the Developer shall make any material changes or amendments to the Condominium Documents, unless Unit Owners who represent at least sixty-seven percent (67%) of the total votes in the Association, joined by Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes of Units that are subject to mortgages held by Eligible Mortgage Holders, shall consent to the change or amendment. For purposes of the foregoing sentence, and without limiting the generality of the foregoing, a change in the provisions of this Declaration, or the other Condominium Documents, relating to the following matters (collectively, the "Material Changes") shall be considered material:

Any change in the proportion or percentages by which a Unit Owner shares the Common Expenses of the Condominium and owns the common surplus of the Condominium excluding a change resulting from Developer exercising its rights under this Section 6.1.

Notwithstanding the foregoing, however, the acquisition of property by the Association and material alterations or substantial additions to such property or the Common Elements by the Association and amendments providing for the transfer of use rights in Limited Common

Elements shall not be deemed to constitute a material alteration or modification of the appurtenances to the Units. Further, the Developer hereby reserves the right to alter the boundaries between Units as long as the Developer owns the Units so altered; provided, however, no such change shall increase the number of Units, nor materially alter the boundaries of the Common Elements, nor change the proportion by which the Owners of Units share the Common Expenses or own the Common Surplus, and provided further that any Eligible Mortgage Holder of such altered Units must consent to the alteration. If the Developer shall make such changes in a Unit or Units permitted in this Section, such changes shall be reflected by an amendment to this Declaration, any other necessary Condominium Documents and the Condominium Plat, with any amended drawing attached, reflecting such authorized alteration of the Unit or Units, and such amendment shall be executed and acknowledged by Developer and any Eligible Mortgage Holder holding a first mortgage encumbering such altered Unit or Units.

Section 6.2 Amendment By Unit Owners. Except as otherwise provided in Section 6.1 herein or elsewhere in the Condominium Documents, or as otherwise granted to the Developer by the Condominium Act, this Declaration may be amended only by Unit Owners who represent at least sixty-seven percent (67%) of the total votes in the Association, joined by Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes of Units that are subject to mortgages held by Eligible Mortgage Holders, at a meeting duly called for such purpose pursuant to the By-Laws; provided, however, that (1) until such time as Developer no longer holds any Units for sale in the ordinary course of Developer's business, no amendment to this Declaration shall be made which affects any of the rights and privileges provided to the Developer as defined herein without the written consent of such Developer, and (2) no amendment may change the configuration or size of a Unit without the written consent of the affected Unit Owner or Owners, joined by the Eligible Mortgage Holder of such Unit. All amendments made under authority of this Section 6.2 shall be recorded and certified as required by the Condominium Act. Notwithstanding the provisions of this Article VI, the Declaration and the exhibits hereto, where applicable, may be amended for the purposes set forth and to correct scrivener's errors.

Section 6.3 Special Amendment. Anything herein to the contrary notwithstanding, Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration, at any time and from time to time, which amends the Declaration and any provision therein (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell insure, guarantee or otherwise deal with first mortgages covering Units; and (iii) to bring this Declaration into compliance with applicable Laws, and, in furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a Special Amendment on behalf of each Unit Owner and the Association. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation

of, the power of the Developer to make, execute and record Special Amendments. Notwithstanding the foregoing, however, the right and power of the Developer to make Special Amendments hereunder shall terminate on the date of turnover of control of the Association to the Unit Owners other than the Developer.

Section 6.4 Limitation. No amendment may be adopted which will eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits of privileges or priorities granted or reserved to the Developer without the consent of Developer in each instance. The provisions of this paragraph may not be amended in any manner.

Section 6.5 Procedure. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the Declaration shall contain the full text of the provision to be amended, new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed changes are so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlines or hyphens of words edited or deleted, but, rather, a notation must be inserted immediately preceding the proposed amendment and substantially in the following language: "Substantial rewording of Declaration. See Provision ____ for proposed text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

ARTICLE VII

ASSOCIATION

The Association shall be the entity responsible for the operation of the Condominium. The Association shall be organized in Tennessee as a not-for-profit corporation and shall fulfill its functions pursuant to the Condominium Act in general and also the following provisions:

Section 7.1 Powers. The Association shall have all of the common law and statutory powers of a corporation not-for-profit, all of the powers and duties set forth in the Condominium Act, this Declaration, the Articles of Incorporation to this Declaration, and By-Laws, and all of the powers and duties necessary to operate the Condominium, whether or not set forth in this Declaration, Articles of Incorporation or the By-Laws, as they may be amended from time to time. Such powers shall include, but not be limited to, the power to make and collect Assessments, to lease, maintain, repair and replace the Common Elements, to borrow money and incur indebtedness, to enter into a shared parking arrangement with adjoining property owners, and to enter into reciprocal agreements with adjoining property owners with respect to the use of certain Common Elements, subject to the provisions of the Articles of Incorporation and By-Laws. Unless otherwise provided by statute, the Condominium Documents or the Condominium Act, the power and duties of the Association shall be exercised by its Board of Directors, which shall consist of not less than three (3) members who are to be elected according to the Articles of Incorporation and By-Laws.

Section 7.2 Membership. The members of the Association shall consist of all of the record owners of Units in the Condominium, including the Developer, and their voting rights shall be as provided in Article V hereinabove and in the Articles of Incorporation and By-Laws. Change of membership in the Association and designation of voting members shall be as provided in the Articles of Incorporation and By-Laws.

Section 7.3 Management By Board of Directors. The affairs of the Association shall be managed by the Board of Directors in the number and designated in the manner provided in the Articles of Incorporation and By-Laws.

Section 7.4 Shares Nontransferable. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to his Unit.

Section 7.5 Binding Effect. Every Owner of a Unit, whether he has acquired his ownership by gift, conveyance or transfer by operation of law, or otherwise, shall be bound by the Articles of Incorporation and By-Laws, the provisions of this Declaration, and all other Condominium Documents. Membership in the Association shall automatically terminate upon the termination of ownership of a Unit in this Condominium, and the subsequent owner(s) taking title shall automatically become entitled to membership.

Section 7.6 Conflict Rules. In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or the exhibits attached hereto, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, as amended from time to time. Notwithstanding anything in this Declaration or the exhibits hereto to the contrary, the Association shall at all times be the entity having ultimate authority over the Condominium, consistent with the Act.

Section 7.7 Non-Liability. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not same shall have been approved by the Association pursuant to the provisions hereof.

Section 7.8 Other Provisions Relating to the Association.

A. Notwithstanding anything contained herein or in the Articles of Incorporation, By-Laws, any rules or regulations of the Association or any other document governing or binding the Association (collectively, the "Association Documents"), the Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of,

the health, safety or welfare of any owner, Occupant or user of any portion of the Condominium Property, including, without limitation, residents and their families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons.

B. It is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the condominium property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Condominium Property and the value thereof.

C. Any provisions of the Association Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

ARTICLE VIII

BY-LAWS

The operation of the Condominium Property shall be governed by the By-Laws. No modification of or amendment to the By-Laws shall be valid unless set forth in or annexed to a duly recorded amendment to this Declaration. The By-Laws may be amended in the manner provided for therein, but no amendment of such By-Laws shall be adopted which would affect or impair the validity or priority of any mortgage covering any Condominium Parcel(s), or which would change the provisions of the By-Laws with respect to Eligible Mortgage Holders without the written approval of all Eligible Mortgage holders. No amendment shall change the rights and privileges of Developer and Management Firm without their respective written consent. Any amendment to the By-Laws, as provided herein, shall be executed by the parties as required in this Article and in Article VI above, and such amendment shall be recorded in the public records of Shelby County, Tennessee.

ARTICLE IX

ASSESSMENTS AND OTHER CHARGES

Section 9.1 Power to Fix and Determine Assessments.

A. In General. The Board of Directors shall fix and determine from time to time the sum or sums necessary and adequate to provide for the Common Expenses and such other sums as are specifically provided for in this Declaration and exhibits attached hereto. The procedure for the determination of all such Assessments shall be as set forth in more detail in the By-Laws. Unless otherwise provided in the resolution levying the Assessment, such Assessment shall be paid in monthly installments with each due on the first of the month. Assessments shall begin upon recordation of this Declaration. The Developer shall be excused from the payment of

Assessments on Units it owns in accordance with the provisions contained in the Estimated Operating Budget and Schedule of Unit Owner's Expenses for the Association. The Association shall include in the Common Expenses such amounts as are sufficient to satisfy its obligations pursuant to this Declaration, including but not limited to, the following:

- (1) Maintenance, repair, replacement, management and operation of the Common Elements;
- (2) Property taxes and assessments against the Condominium Property (until such time as any of such taxes and assessments are made against the Units and their undivided share of the Common Elements and Limited Common Elements individually, and thereafter only as to such taxes and assessments, if any, as may be assessed against the Condominium Property as a whole);
- (3) Insurance premiums for insurance procured by the Association;
- (4) Legal and accounting fees and expenses of the Association;
- (5) Management fees, costs and expenses and operating expenses of the Condominium Property and Association;
- (6) Repairs, replacements, and maintenance expenses (but only as to the Common Elements and Limited Common Elements, except for emergency repairs or replacements to individual Units deemed necessary by the Association to protect the Common Elements and Limited Common Elements);
- (7) Charges for all Utilities used in common for the benefit of the Condominium (or not separately metered to each Unit) and any bulk-metered or bulk-calculated Utility services rendered to the Condominium Property or the Units for their benefit, including cleaning and janitorial services for the Common Elements and Limited Common Elements;
- (8) Fiber optic, data, voice or other communication system, and all other services maintained by the Association for the use and benefit of the Unit Owners;
- (9) Liability incurred by the Association in and about the enforcement of its rights and duties against the Unit Owners or other parties, including attorneys and legal assistants fees and expenses;
- (10) Reasonable contingency and/or reserve funds for the protection of the Members and the Condominium Property;
- (11) Fees and costs associated with and attributable to the maintenance and repair of any parking areas shared with adjoining property owners pursuant to a shared parking arrangement between the Association and such property owners;

(12) Fees and costs associated with and attributable to shared use agreements with adjoining property owners with respect to their use of certain portion of the common elements; and

(13) All other expenses declared by the Board of Directors of the Association to be Common Expenses from time to time, and any and all other sums due from the Association under any agreement, lease, contract or undertaking affecting all or any portion of the Common Elements or Limited Common Elements.

B. Budget for General Assessments. The Board of Directors shall from time to time, and at least annually, prepare and adopt a budget for the Condominium ("Budget for Common Expenses"), determine the amount payable by the Unit Owners to meet the Common Expenses of the Condominium, and allocate and assess such Expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws ("General Assessment").

(1) The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the General Assessment payable by each of them as determined by the Board of Directors as aforesaid. The Budget for Common Expenses shall include the reserves required by law or determined appropriate by the Board, the costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles of Incorporation, the By-Laws or applicable rules and regulations of the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated.

C. Any adopted Budget for Common Expenses shall be subject to change by the Board of Directors, and the amount of the General Assessment shall be changed in accordance with such revised Budget for Common Expenses to cover actual expenses at any time.

D. If the Board of Directors adopts in any fiscal year of the Association a Budget for Common Expenses which requires General Assessments against Unit Owners which exceed one hundred fifteen percent (115%) of General Assessments for the preceding fiscal year, the Board of Directors shall conduct a special meeting of the Unit Owners to consider a substitute budget, if the Board of Directors receives, within twenty-one (21) days after adoption of the Budget for Common Expenses, a written request for a special meeting from Unit Owners who represent at least fifty percent (50%) of the total votes in the Association. The special meeting shall be conducted within sixty (60) days after adoption of the Budget for Common Expenses. At least fourteen (14) days prior to such special meeting, the Board of Directors shall hand deliver to each Unit Owner, or mail to each Unit Owner at the address last furnished to the Association, a notice of the meeting. An officer or manager of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with this

notice requirement, and such affidavit shall be filed among the official records of the Association. Unit Owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests of the Association. If there is not a quorum at the special meeting or a substitute budget is not adopted, the Budget for Common Expenses previously adopted by the Board of Directors shall take effect as scheduled. Any determination of whether General Assessments exceed one hundred fifteen percent (115%) of General Assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses of the Association which the Board of Directors does not expect to be incurred on a regular or annual basis, or Assessments for betterments to the Condominium Property.

E. Other Assessments. In addition to General Assessments, the Board of Directors may levy "Special Assessments," "Capital Improvement Assessments" and "Limited Common Element Assessments" upon the following terms and conditions:

(1) "Special Assessments" shall mean or refer to amounts levied against each Owner and such Owner's Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.

(2) "Capital Improvement Assessments" shall mean and refer to amounts levied against each Owner and such Owner's Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from maintenance and repairs) of any capital improvements located or to be located within the Common Elements.

(3) Special Assessments and Capital Improvement Assessments may be levied by the Board of Directors and shall be payable in lump sums or installments, in the discretion of the Board.

(4) "Limited Common Element Assessments" shall mean and refer to amounts levied against the Owners of Units for the maintenance, repair, replacement and/or reconstruction of the Limited Common Elements described in Article III, Section E hereinabove which are appurtenant to such Units.

(5) Unit Owners, by virtue of their taking title to their Unit, agree to the foregoing and acknowledge that they have a contractual obligation and agreement with each other as to the payment of General Assessments, Special Assessments, Capital Improvement Assessments and Limited Common Element Assessments which may be enforced in any court of competent jurisdiction.

(6) Notwithstanding anything herein to the contrary, the Developer during such time as Developer controls the Association as provided in Article I of the By-Laws or the Developer appointed Board shall be authorized to reduce the

amount of annual assessments owed by Unit Owners without the vote of Owners to reflect cost savings not anticipated at the time the initial estimated operating budget for the Association was compiled.

F. Personal Liability. Each Unit Owner shall be personally liable to pay the Assessments levied with respect to each Unit owned by such Unit Owner. Additionally, the Association shall have a lien on each Condominium Parcel to secure payment of the respective Assessments, together with interest thereon, costs, reasonable attorneys' fees incurred by the Association incident to the collection of such Assessments or the enforcement of such lien, and such additional amounts as may be provided by the Condominium Act or other applicable Tennessee law. The Board of Directors may take such action as it deems necessary to collect Assessments or other amounts due by personal action or by enforcing and foreclosing such lien, and may settle and compromise the same if deemed in its best interests. No Owner of a Unit may exempt himself from liability for Unit Owner's contribution toward the Common Expenses by abandonment of the Unit or by refusal or waiver of the use and enjoyment of any of the Common Elements or services for which the fee or cost constitutes a part of the Common Expenses.

G. Default in Payment of Assessments.

(1) Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the rate established from time to time by the Board of Directors from the due date until paid (provided, however, that no such rate shall exceed the maximum allowed by law). In the event the Board has not established such rate, the interest rate shall be 18% per annum or the highest rate permissible under applicable Tennessee law, whichever is less. Each delinquent payment also shall be subject to an administrative late fee in an amount established by the Board from time to time, not to exceed the highest fee permitted by the Act. If any payment is made by a check that is dishonored by the Unit Owner's bank, all bank charges and collection costs incurred by the Association in connection with such dishonored check shall be due and payable to the Association, and shall be equally secured by the lien described in this subsection below.

(2) The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Condominium Parcel, with interest thereon and for reasonable attorneys' fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien shall be effective on the earliest date allowed by law, which shall be no later than as of the recording of the claim of lien. Such lien shall be evidenced by the recording of a claim of lien in the public records of Shelby County, Tennessee stating the description of the Condominium Parcel, the name of the record Unit Owner, the name and address of the Association, the amounts due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been

fully paid or until such claim of lien is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, interest thereon, the administrative late fee (if permitted under applicable law), and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof.

(3) A claim of lien shall be signed and acknowledged by an officer or authorized agent of the Association. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association or its assignee may bring an action to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed in Tennessee and may also bring an action at law to recover a money judgment for the unpaid Assessments and other amounts due without waiving any claim of lien. The Association is entitled to recover its costs and reasonable attorneys' fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

(4) As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the balance of General Assessment installments due for the remainder of the fiscal year and payments of other known Assessments to be accelerated and shall thereupon be immediately due and payable. In the event that the amount of such accelerated installments or payments changes, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of the same taking effect.

(5) Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued as provided above, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection as aforesaid and then to the delinquent and any accelerated Assessments. The foregoing application of funds received shall be applicable despite any restrictive endorsement, designation or instruction placed on or accompanying a payment.

(6) The Association shall give written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments at least 30 days before institution of any foreclosure action with respect to such lien. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the

court may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. Notwithstanding the foregoing provisions, the notice requirements of this subsection are deemed satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

(7) The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose a lien, and to apply as a cash credit against its bid all sums due, as provided herein, covered by the lien enforced. In case of such foreclosure, the Unit Owner may at the court's discretion be required to pay a reasonable rental for the Unit or the period of time such Unit is occupied by the Unit Owner, or anyone by, through or under such Unit Owner, and plaintiff in such foreclosure may request the appointment of a receiver to collect same from the Unit Owner and/or Occupant.

(8) If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased while the foreclosure action is pending, the Association is entitled to the appointment of a receiver to collect the rent, the expenses of such receiver to be paid by the party that does not prevail in the foreclosure action.

(9) In the event the holder of a first mortgage encumbering a Unit or other purchaser at foreclosure sale conducted incident to the foreclosure of a first mortgage, shall obtain title to a Unit by foreclosure, or by deed in lieu of foreclosure, such first mortgagee or purchaser, its or their successors and assigns, shall be liable for Assessments or other related expenses authorized under the Act secured by the claim of lien only to the extent provided by the Act. If, due to the applicable provisions of the Act, any unpaid share of the Assessments or other related expenses authorized under the Act are not required to be paid, then such unpaid share or other related expenses authorized under the Act shall be deemed to be a Common Expense collectible from all of the Unit Owners, including such acquirer and such acquirer's successors and assigns. Any person who acquires an interest in a Unit, except through foreclosure of a first mortgage of record, or by virtue of a deed given in lieu of foreclosure, as specifically provided hereinabove, including without limitation persons acquiring title by operation of law, including purchasers at judicial sales, shall be obligated for all unpaid Assessments and other amounts due from the former Unit Owners. The Association, acting through its Board of Directors, shall continue to have lien rights as referenced in this Article. Notwithstanding any provision in this Section 9.1.G.(9) to the contrary, any assessment lien provided for in this Section or in this Declaration shall be subordinate to the lien of any mortgagee holding a first lien upon a Unit.

(10) Within fifteen (15) days after request by a Unit Owner or Eligible Mortgage Holder of a Unit, the Association shall provide a certificate stating all Assessments and other monies owed to the Association by the Unit Owner with

respect to such Owner's Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

H. Capital Reserves. The Association shall maintain a reserve fund to be used solely for making capital expenditures in connection with the Common Elements (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of the improvements to the Common Elements and equipment owned by the Association as well as periodic projections of the cost of anticipated major repairs or improvements to the Common Elements or the purchase of equipment to be used by the Association in connection with its duties hereunder. Each budget shall disclose that percentage of the annual Assessment that shall be added to the Capital Reserve, and each Unit Owner shall be deemed to make a capital contribution to the Association equal to such percentage multiplied by each installment of the annual Assessment paid by such Unit Owner. Such reserves may be waived or reduced on an annual basis as determined by the Board. Extraordinary expenditures not originally included in the annual estimate that may become necessary during the year shall be charged first against such portions of any contingency reserve or Capital Reserve, as applicable, which remains unallocated. If the "estimated cash requirement" proves inadequate for any reason or in the event a non-recurring Common Expense is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or non-recurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a separate Assessment shall be made to each Unit Owner for his proportionate share of such supplemental budget. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount.

I. Working Capital Funds. At the time the initial sale of each Unit is closed, the purchaser of the Unit shall pay to the Association an amount equal to two (2) times the first full monthly Assessment for such Unit. This sum shall be used and applied for start-up costs and as a working capital fund in connection with all initial operating expenses for the Common Elements. This payment shall not be refundable or applied as a credit against the Unit Owner's monthly Assessments, and shall not be used by the Developer to resolve any budget deficits during the time the Developer is in control of the Association.

ARTICLE X

PROVISIONS RELATING TO THE SALE OR RENTAL OF UNITS

In order to insure a community of congenial residents and thus protect the value of the Units, the sale, leasing, rental and transfer of Units by any Owner other than the Developer (except with respect to Section 10.4 hereof, relating to the rental or leasing of Units, which shall be binding on the Developer) shall be subject to the following provisions:

Section 10.1 Conveyances, Sales and Transfers. Prior to the sale, conveyance or transfer of any Condominium Parcel to any other person the Unit Owner shall notify the Board of Directors of the Association of such proposed sale, conveyance or transfer by delivering to the

Association or its agents a completed notification form, identifying the name and address of the person(s) to whom the proposed sale, conveyance or transfer is to be made. The Association may charge a transfer fee to offset its costs of reviewing and processing the notification, but in no event shall such fee exceed \$100.00 per applicant, other than husband/wife or parent/dependent child, which shall be considered one applicant. The Association, or its agents, shall determine the format of the notification form as well as receive and process the required notifications.

Section 10.2 Rental or Lease of Units. An Owner of a Unit may not lease or rent his interest in the Unit for any period of time less than one (1) year, nor may any Unit be leased more than two (2) separate times in each calendar year. The Unit Owner renting or leasing his Unit shall promptly notify the Secretary of the Association, or such other person or entity as the Association may designate, of each renter and the term of such rental or lease. The Association shall have the right to approve the renter and his or her family for residency in the Condominium, and in furtherance thereof, the Unit Owner shall submit such information concerning the identity of the renter as the Association may require. The Association shall have the right to charge a fee not exceeding \$100.00 for the review and approval of each renter. The sub-leasing or sub-renting of a Unit Owner's interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The Association shall have the right to require, upon not fewer than thirty (30) days' prior written notice to all Unit Owners, that a uniform form of lease or sub-lease shall be used by all Unit Owners (including the Developer) intending to rent or lease after the date of such notice and to provide such form to the Unit Owners as a Common Expense. All leases or rental agreements must be in writing and must be subject to the terms and conditions of this Declaration and the Articles of Incorporation and By-Laws. No individual rooms may be rented and no transient tenants may be accommodated. The Developer shall not be subject to the foregoing restrictions and requirements and shall have the right to conduct programs of short-term and long-term rentals of all such Units as it may own prior to the selling of such Units.

Section 10.3 Continuing Liability. The liability of the Unit Owner under these covenants shall continue, notwithstanding the fact that he may have leased, rented or sub-let such interest as provided herein. Every purchaser, tenant or lessee, shall take subject to this Declaration, the Articles of Incorporation and By-Laws, and all other Condominium Documents, as well as the provisions of the Condominium Act.

Section 10.4 Special Provisions Regarding the Sale, Leasing, Mortgaging or Other Alienation by Certain Mortgagees and Developer.

A. **Rights of Mortgagees.** A mortgagee holding a mortgage on a Unit, or the Association, upon becoming the Owner of a Unit through foreclosure, or by deed in lieu of foreclosure, or whomsoever shall acquire the title to a Unit at the foreclosure sale of a first mortgage held by a mortgagee, or at a foreclosure sale conducted pursuant to the foreclosure of a lien for Common Expenses, shall have the unqualified right to sell, lease or otherwise transfer such Unit, including the fee ownership thereof, and/or to mortgage such Unit, without compliance with the approval or notice requirement of this Article. Notwithstanding the

foregoing, however, notice of such transfers, leases or rentals must be given to the Association, or its agents, solely for the purpose of providing information to the Association so that the Association may maintain an accurate roster of Unit Owners and tenants; provided, however, the failure to provide such notice shall not void or otherwise negate the rights of a mortgagee to transfer, sell or lease such Unit without prior notice to or approval of the Association.

B. Rights of Developer. The Developer is irrevocably empowered to sell, rent and/or mortgage Units to any purchaser, tenant, or mortgagee. The Developer shall have the right to transact any business necessary to consummate sales or leases of Units, including, but not limited to, the right to maintain models, have signs, use the Common Elements, and to show Units. The sale office(s), signs, and all items pertaining to sales and rentals shall not be considered Common Elements, and shall remain the property of the Developer. The Developer may use any unsold Unit(s) as a sales office and/or model Unit(s).

C. Unsold Units. In the event there are unsold Units, the Developer retains the right to be the Owner of such unsold Units under the same terms and conditions as all other Unit Owners in such Condominium (except as otherwise provided herein).

Section 10.5 Time Share. Time-share estates in any form are prohibited and shall not be permitted.

ARTICLE XI

INSURANCE, RESTORATION OF IMPROVEMENTS AND EMINENT DOMAIN

Section 11.1 Insurance. The insurance (other than title insurance) that shall be carried upon the Condominium Property and the property of the Unit Owners shall be governed by the following provisions:

A. Authority to Procure Insurance. The Board of Directors shall have the authority to and shall obtain insurance for the Property as follows:

(1) Insurance on the Property, including the Units, Common Elements, and Limited Common Elements, all items under the terms of this Declaration for which the Association is responsible for the maintenance thereof, and all items for which the Association is required under applicable provisions of the Condominium Act to insure, against loss or damage by fire and against loss or damage by risks now or hereafter embraced by standard extended coverage and vandalism and malicious mischief endorsements, in an amount sufficient to prevent the insured from being a co-insurer within the terms of the applicable policies, but in any event in an amount not less than one hundred percent (100%) of the full insurance replacement cost thereof. The "full insurance replacement cost" shall be determined from time to time by the Board, which determination may be based upon appropriate insurance appraisals. The cost of all such appraisals shall be deemed a Common Expense.

(2) To the extent applicable, if any, insurance on the Property (excluding excavations, foundations and footings) against all loss or damage from explosion of heating apparatus, pressure vessels and pressure pipes, if any, installed in, on or about such Property, without co-insurance clause so long as available, in such amount as the Board shall deem desirable.

(3) Commercial General Liability insurance against claims for personal injury or death or property damage suffered by the public or by any passageways and other areas adjoining the Property, such public liability and property damage insurance to afford protection to such limits as the Board shall deem desirable (but in no event for less than Three Million Dollars (\$3,000,000.00) with respect to liability for personal injury or property damage arising out of a single accident), and such insurance coverage to include Unit Owners as additional insureds, but only with respect to that portion of the Property not reserved for the exclusive use of a single Unit Owner.

(4) Such workers' compensation insurance as may be necessary to comply with applicable Laws.

(5) Employer's liability insurance in such amount as the Board shall deem desirable.

(6) Adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the Association" includes, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the Association. The Association shall bear the cost of the insurance or fidelity bonding, which shall be a Common Expense.

(7) The casualty and liability insurance, hazard and flood insurance, and fidelity bond coverage required to be maintained by the Association shall meet the requirements specified in the FNMA Lending Guide, Part 5, Chapter Seven, "Insurance Requirements."

(8) Such other insurance (including insurance with respect to officers' and directors' liability) as may be required by law or deemed necessary by the Board, in such reasonable amounts as the Board shall deem desirable.

The premiums for the above-described insurance, and the cost arising from deductibles under any such policies in the event of a loss, except as otherwise provided in this Article, shall be a part of the Common Expenses.

B. Insurers. All insurance provided for in this Article shall be maintained under valid and enforceable policies, and procured from companies that are rated by Best's Rating Guide as not less than "A-/X," and which are authorized to do business in the State of Tennessee.

C. Named Insureds. All policies of insurance of the character described in Section 11.1: (a) shall name, as insured, the Developer, so long as it has an insurable interest, and the Association individually and as trustee of the Unit Owners and their respective mortgagees without naming them, and shall also name as an insured the Insurance Trustee, described in Paragraph (6) of Section 11.1 A, as the respective interests of all such insureds may appear; (b) shall be without contribution as respects other such policies of insurance carried individually by the Unit Owners whether such other insurance covers their respective Units and/or the additions and improvements made by such Unit Owners to their respective Units; (c) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement thereof, such option shall not be exercisable in the event the Unit Owners elect to sell the Submitted Property or terminate the Condominium; and (d) shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to the mortgagee of each Unit. Policies of insurance of the character described in Paragraph (1) of Section 11.1 may contain an endorsement extending coverage so as to include the payment of Common Expenses with respect to damaged Units during the period of reconstruction thereof. Notwithstanding the issuance of standard mortgage clause endorsements under the policies of insurance of the character described in Paragraphs (1) and (1) of Section 11.1, any losses under such policies shall be payable, and all insurance proceeds recovered thereunder shall be applied and discussed, in accordance with the provisions of this Declaration.

D. Other Named Insureds. All policies of insurance of the character described in Section 11.1 shall name as insureds the Association, the Board, the Management Firm, and the other agents and employees of such Association, Board and Management Firm and the Developer in its capacity as a Unit Owner and Board member, and shall also provide coverage for each Unit Owner (but as to the insurance described in Paragraph (1) of Section 11.1, only with respect to those portions of the Property not reserved for his or her exclusive use). In addition, all policies of insurance of the character described in Paragraph (1) of Section 11.1 shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board, the Developer, the Management Firm, their respective employees and agents, and the Unit Owners and Occupants.

E. Payment of Premiums. The Association, for the benefit of the Unit Owners and the mortgagee of each Unit, shall pay the premiums on the policies of insurance described in Paragraph (1) of Section 11.1 not later than the expiration dates of the respective policies.

F. Loss Payable. The loss, if any, under any policies of insurance of the character described in Paragraphs A and B of Section 11.1 shall be payable, and the insurance proceeds paid, on account of any such loss shall be applied and disbursed as follows:

(1) To the Association, as trustee for each of the Unit Owners and their respective mortgagees in their respective percentages of ownership in the Common Elements as established in the Declaration, in the case of any one loss, of FIFTY THOUSAND DOLLARS (\$50,000.00) or less in the aggregate, which insurance proceeds, less the actual costs, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be applied to the payment of the cost of restoring the Property to substantially the same condition in which it existed immediately prior to such damage or destruction, with each Unit and Common Element having the same vertical and horizontal boundaries as before, free from construction liens and other similar liens, in accordance with the provisions of subsection C, below; or

(2) In case of any one loss exceeding FIFTY THOUSAND DOLLARS (\$50,000.00) in the aggregate, then the insurance proceeds shall be paid to such state or national banking institution or other corporate entity having the power to act as a trustee under the laws of Tennessee, designated by the Board to act as trustee (the "Insurance Trustee") for the purpose of collecting and disbursing the insurance proceeds described in this subparagraph (b). If the Insurance Trustee shall fail or cease for any reason to act as the Insurance Trustee, then the Board shall appoint a successor Insurance Trustee. The Insurance Trustee shall not be liable for the payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds, nor for the form or content of the policies. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and distribute the same as herein provided for the purposes elsewhere stated. Subject to the provisions of subsection C(2) below, such proceeds, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, and the fees of the Insurance Trustee, shall be applied by the Insurance Trustee to the payment of the cost of restoring the Property to substantially the same condition in which it existed immediately prior to such damage or destruction, with each Unit and Common Element having the same vertical and horizontal boundaries as before. Such proceeds shall be paid by the Insurance Trustee to or for the account of the Association, from time to time as work progresses, in such manner as shall be required to facilitate the restoration of the damaged property. The Association and the Insurance Trustee may, prior or subsequent to any such loss, enter into an insurance trust agreement further implementing the provisions of this Declaration with respect to the collection and disbursement of proceeds of insurance by the Insurance Trustee.

G. Board Authority. The Board or, where applicable, the Insurance Trustee shall have the exclusive authority to negotiate losses under any policy providing property or

