

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR THE BROWNSTONES AT BRAGG POINT**

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**DECLARATION OF COVENANTS, CONDITIONS,**

**RESTRICTIONS AND EASEMENTS FOR THE BROWNSTONES AT BRAGG POINT**

**THIS DECLARATION** ("Declaration") is made this 28<sup>th</sup> day of October, 2011, by **BRAGG POINT PROPERTIES, LLC**, a Tennessee limited liability company ("Developer").

**WHEREAS**, Developer is the owner of that real property located in Hamilton County, Tennessee, described on Exhibit A to this Declaration, such description being incorporated by this reference; and

**WHEREAS**, by this Declaration, Developer desires to submit such property, together with all of the improvements located thereon (the "Property"), to the terms, covenants, conditions, restrictions and easements set forth herein.

**NOW, THEREFORE**, Developer hereby subjects the Property to the terms of this Declaration and declares that the Property is and shall be owned, held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered, subject to all of the terms, provisions, covenants, conditions, easements, restrictions, charges, assessments, affirmative obligations, and liens (sometimes collectively referred to as the "Covenants") hereinafter set forth, and these Covenants shall run with the land and be binding on all parties holding or acquiring any right, title or interest in the Property, or any part thereof, whether or not so expressed in any deed or other conveyance, and shall inure to the benefit of each owner thereof.

1. CONCEPTS AND DEFINITIONS.

(a) *Defined Terms.* Generally, terms shall have their normal, generally accepted meanings. Unless the context otherwise requires, capitalized terms used in the Development Instruments shall be defined as follows:

*Articles* or *Articles of Incorporation* means the Articles of Incorporation of the Association, which have been filed with the Secretary of State of the State of Tennessee.

*Association* means The Brownstones at Bragg Point Homeowners Association, Inc., a Tennessee nonprofit corporation, its successors or assigns.

*Board* or *Board of Directors* means the elected body responsible for management and operation of the Association.

*By-Laws* means the By-Laws of the Association adopted by the Board of Directors, a copy of which is attached as Exhibit B, as such By-Laws may be amended.

*Common Expenses* means the expenses which the Association incurs or expects to incur for the general benefit of all Lots, including, but not limited to, (a) those expenses incurred for maintaining, repairing, replacing, and operating those Common Properties which are the Association's responsibility hereunder; (b) expenses determined by the Association to be Common Expenses and which are lawfully assessed against Owners, including without limitation those provided in Section 5(a) hereof; (c) expenses declared to be Common Expenses by a

Development Instrument; and (d) reasonable reserves established for the payment of any of the foregoing.

*Common Properties* mean those items of personal property, fixtures, or areas of land, with any improvements thereon, whether owned in fee simple or by virtue of an easement, license or otherwise, which are conveyed to the Association and/or are intended for the common use and enjoyment of all Owners (e.g., park areas, sidewalks, and entrance signs) a non-exclusive list of which is provided in Section 2(b) hereof, and (ii) the Open Space Community Lot identified as Lot 1 on the Plat.

*Developer* means Bragg Point Properties, LLC, a Tennessee limited liability company, and its successors and assigns.

*Development* means the whole of the Brownstones at Bragg Point development as being developed by Developer on the Property.

*Development Instruments* means this Declaration and all exhibits to this Declaration, the Plat referenced below, the Articles, the By-Laws, and the Rules and Regulations, all as they may be supplemented or amended from time to time.

*Drainage Pond* means that certain drainage detention/retention pond located on Lot 1 of the Property which is subject to that certain Declaration of Drainage Easement executed by Developer, recorded in the Office of the Register of Hamilton County, Tennessee, at Book 8954, Page 188.

*Lot* means a portion of the Property shown as a lot on the Plat, but does not include the Open Space Community Lot identified as Lot 1 on the Plat.

*Majority* means those eligible votes, Owners, or other group as the context may indicate, totaling more than 50% percent of the total eligible number.

*Mortgage* refers to any mortgage, deed to secure debt, deed of trust, or other instrument granting a lien upon or security interest in the title to a Lot.

*Mortgagee* means the holder of any Mortgage.

*Owner* means the record title holder of a fee simple or undivided fee simple interest in a Lot, but does not include a Mortgagee. If there is more than one Owner of a particular Lot, the term "Owner" shall refer to all co-Owners of the Lot collectively, and they shall be jointly and severally responsible for the obligations of an Owner and shall share the rights of an Owner under the Development Instruments.

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

*Plat* means the planned unit development plat of the Brownstones at Bragg Point, recorded in the Office of the Register of Hamilton County, Tennessee at Plat Book 94, Page 85, and all amendments to said plat.

*Townhome* means the structural improvement located on each Lot designated and intended for use and occupancy by a single family.

*Townhome Pod* means each collective grouping of multiple Townhomes constructed so as to share demising walls or otherwise to be physically joined, separate from other groupings of Townhomes.

(b) *Interpretation of Certain References.*

*Consent or Approval:* All references in the Development Instruments to “consent” or “approval” shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

*Discretion and Determination:* All references in the Development Instruments to “discretion” or to the right to “determine” any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Development Instruments, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying the decision, determination, action, or inaction.

*Recording:* All references in the Development Instruments to a “recorded” legal instrument, or to “recordation” or the “recording” of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the Office of the Register of Hamilton County, Tennessee, or such other place designated as the official location for filing documents affecting title to real estate in Hamilton County in order to make them a matter of public record.

2. PROPERTY; COMMON PROPERTIES AND IMPROVEMENTS THEREON.

(a) *Property.* The real property which is covered by this Declaration (including Lots and Common Properties) is described on Exhibit A, and shall be held, transferred, sold, conveyed, leased and occupied, subject to the Covenants contained in this Declaration.

(b) *Common Properties.* The Developer has or may elect to install the following as amenities to the Development, all of which shall be deemed part of the Common Properties whether located upon any Lot(s): (i) controlled access gate, landscaping, and signage located at the entrance on S. Crest Place, (ii) the continuous retaining wall that is located approximately along the southeastern boundary line of each of the Lots, (iii) to the extent not part of the adjacent public right-of-way and not maintained by the local governmental authority, the sidewalk between the Lots and S. Crest Place, (iv) continuous, irrigated, planted greenbelts between the exterior walls of Townhomes located on Lots 8 and 14, respectively, and the northeastern and southwestern boundary lines of said Lots, (v) all of the Open Space Community Lot (as shown on the Plat as Lot 1), which is reserved as common property and which features the Drainage Pond, plantings, and irrigation, and (vi) community lighting consisting of entry wall post lamps, pedestrian arched sconces, well wall spotlights, well lights, and streetlamps located upon any portion of the Property. The Association is responsible for the operation, maintenance, repair and replacement of all Common Properties.

(c) *Association and Board; Access.* The enforcement of this Declaration, the management, maintenance and control of the Common Properties and the other business of the Development shall be conducted by the Association and the Board as provided herein and in the Bylaws. To the extent reasonably necessary to enforce this Declaration or to perform any of the Covenants or the obligations of the Board and/or the Association, the Board and/or the Association shall have the right to access any Lot (but not to enter any Townhome) and same shall not be deemed trespass.

### 3. PARTY WALLS AND KNEE-WALLS.

(i) *Party Walls.* Each wall which is built as a part of the original construction of a Townhome and placed on the dividing lines between two (2) Lots shall constitute a party wall, the maintenance, repair and replacement of which shall be subject to the general rules of law regarding party walls and liability for property damage from negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners of the adjoining Townhomes equally. If a party wall is destroyed or damaged by fire or other casualty, either Owner who adjoins the wall may restore it. The other Owner (of the adjoining Townhome) shall contribute equally to the restoration cost, without prejudice, however, to the right of any such Owner to call for a larger contribution from the Owner under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provisions herein to the contrary, an Owner, who by such Owner's negligent or willful act damages a party wall or otherwise causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary repairs as needed. In the event of any dispute arising concerning the repair, maintenance, or replacement of a party wall, or under the provisions of this Declaration, the Board of Directors shall govern with its decision to be final and conclusive.

(ii) *Knee-Walls.* On the Third Floor of each Townhome, extending over and above the roofline of each Townhome, a wooden structure ("Knee-Wall") shall separate the Open Roof Decks (as shown on the Plans) of adjoining Townhomes, the maintenance, repair, and replacement of which shall be subject to the general rules of law regarding party walls and liability for property damage from negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a Knee-Wall shall be shared by the Owners of the adjoining Townhomes equally. If a Knee-Wall is destroyed or damaged by fire or other casualty, either Owner who adjoins the Knee-Wall may restore it. The other Owner (of the adjoining Townhome) shall contribute equally to the restoration cost, without prejudice, however, to the right of any such Owner to call for a larger contribution from the Owner under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provisions herein to the contrary, an Owner, who by such Owner's negligent or willful act damages a Knee-Wall, shall bear the whole cost of furnishing the necessary repairs as needed. In the event of any dispute arising concerning the repair, maintenance, or replacement of a Knee-Wall, or under the provisions of this Declaration, the Board of Directors shall govern with its decision to be final and conclusive.

(b) *Physical Boundaries.* In interpreting deeds and plans, the existing physical boundaries of a Townhome as originally constructed or of a Townhome reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be the

boundaries between adjoining Lots rather than the metes and bounds expressed in any deed or the Plat, regardless of settling or lateral movement of the building in which the Townhome was located, and regardless of minor variance between the boundaries shown on the Plat or in a deed and those of the Townhome.

(c) *Easement of Support.* Every portion of a Townhome contributing to the support of an abutting Townhome shall be burdened with an easement of support for the benefit of such abutting Townhome.

#### 4. ASSOCIATION; MEMBERSHIP AND POWERS.

(a) *The Association and Membership.* The Association has been formed pursuant to the Articles. The Association shall consist of all Owners, and each Owner shall be a member of the Association so long as he is an Owner. The Association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized, and to do every other act not inconsistent with law which may be appropriate to promote and attain the purposes set forth in this Declaration or the By-laws. All of the Owners irrevocably constitute and appoint the Association, in their names, as attorney in fact to effectuate the above. This power is coupled with an interest and may not be revoked. The Association shall operate pursuant to the By-Laws. The fiscal year of the Association shall be determined by the Board and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of Owners in accordance with the provisions of this Declaration and the By-Laws. An Owner's membership in the Association shall automatically terminate when he ceases to be an Owner. Upon the conveyance or transfer of an Owner's ownership interest to a new Owner, the new Owner shall simultaneously succeed to the former Owner's membership in the Association.

(b) *Voting.* The Association shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Lot owned, except that Developer shall have a total of six (6) votes (regardless of the number of Lots owned by Developer) for so long as the Developer owns a Lot. In the event of co-ownership of a Lot, the co-owners shall designate for the Association the person whose vote controls for such Lot.

(c) *The Board; Developer as the Board.* The Association shall be governed by the Board of Directors which shall consist of three (3) individuals. Subject to this Declaration, the Board shall have standing to act in a representative capacity on behalf of the Association, exercising all rights and powers of the Association without a vote of the Association. Notwithstanding the foregoing, the Developer shall exercise the sole and exclusive authority and all powers, duties, obligations, and responsibilities of the Board during the Developer Control Period (as defined in Section 13(b) hereof). Pursuant to Section 13 of this Declaration, the Board of Directors shall be appointed and removed by the Developer during the Developer Control Period. Directors on the Board do not have to be Owners.

(d) *Powers of the Association.* In addition to such powers as may be necessary and convenient for the administration and governance of the Association and in addition to such powers as may be provided for under the Development Instruments, the Association, acting

through its Board of Directors or such Association employees or agents as the Board may authorize, has the right and authority to:

(i) Hold title and possession to funds and property, including the assessments and title to any part of the Property, as trustee for the use and benefit of the Owners.

✓(ii) Control, manage, operate, maintain, improve, and replace all portions of the Property for which the Association is assigned maintenance responsibility under this Declaration and to conduct such other activities as may be determined by the Association to promote the health, safety, and welfare of the Owners.

(iii) Make, adopt, and enforce reasonable rules and regulations governing the use of the Property (the "Rules and Regulations"), which Rules and Regulations shall be binding upon all Owners, occupants, guests, and invitees until and unless overruled, canceled, or modified by a resolution approved by persons entitled to cast at least a Majority of the total votes in the Association, and by the Developer during the Developer Control Period.

✓(iv) Fix, levy, collect, and enforce the collection of all charges, dues, or Assessments made pursuant to the terms of this Declaration and otherwise enforce the terms and provisions of the Development Instruments. In an appropriate situation, the Association may also enforce the Development Instruments by self-help.

(v) Deal with the Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration.

(vi) Enter into contracts for management of the Association and delegate to a manager the management duties of the Association, to be performed by such manager under the supervision of the Association.

(vii) Pay the cost of any power, water, sewer or other utility services rendered to the Association and not billed to individual Lots.

(viii) Contract and pay for casualty, liability, property damage and other insurance on behalf of the Association to insure against claims which may arise against the Owners, Association, Developer, and Board.

(ix) Prepare and review-budgets and financial statements as prescribed in the By-laws and otherwise administer the financial affairs of the Association.

(x) Employ professionals and consultants to advise and assist the officers and Board in the performance of their duties and responsibilities for the Association.

(xi) Execute such documents and perform such acts as may be necessary or appropriate to accomplish its administrative or managerial duties.

(e) *Nonliability.* Neither the Association nor the Board, and its members; officers or persons serving on a board-appointed committee shall be liable to any Owner or to any other Person for any loss, damage or injury arising out of or resulting from their acts and omissions in performance of their respective powers and duties under this Declaration.

5. COMMON EXPENSES; ASSESSMENTS.

(a) *Specific Common Expenses.* Common Expenses shall include, without limitation: (i) the costs of maintaining, repairing and replacing (1) the amenities listed and described in Section 2(b) hereof, (2) the French-drain system located around the perimeter of the Townhomes, (3) the common fence(s) located approximately along the boundary line of adjoining Lots, and (4) all paved surfaces, inclusive of parking areas and driving lanes, located on the Property; and (ii) the costs associated with lawn services and landscaping of the front yard of each Lot, the side yards of Lots 8 and 14, respectively, the "Open Space Community Lot" identified on the Plat, and any parking islands and immediate vicinity of all paved surfaces located on the Property.

(b) *Creation of Lien and Personal Obligation of Assessments.* Each Owner by acceptance of a deed conveying a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all of the terms and provisions of the Covenants contained in this Declaration and to pay to the Association annual assessments and special assessments for the purposes set forth herein, such assessments to be fixed, established and collected from time to time as hereinafter provided. Lots owned by Developer shall not be subject to the assessments made pursuant to this Declaration.

(c) *Purpose of Assessment.* The regular and special assessments levied by the Association shall be used exclusively for the purposes herein set forth and to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Properties or the administration of the Development generally.

(d) *Amount of Annual Assessment.* Until the election of a Board to succeed Developer consisting entirely of persons other than Developer (or its appointees) as described in the Bylaws, the amount of the annual assessments shall be set and may be adjusted by the Developer as it deems appropriate relative to the budgetary needs of the Association. Annual assessments may be adjusted more frequently than annually if necessary (whether by the Developer or by the Board). After election of a Board consisting entirely of persons other than Developer, the annual budget for the Association and the amount of the Annual Assessments shall be set by the Board.

(e) *Special Assessments.* In addition to the annual assessments authorized by this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the Common Properties, including the necessary fixtures and personal property related thereto, capital improvements or additions to the Common Properties, or any other unanticipated expense of the Association.

(f) *Lien.* All such assessments, together with late charges, fines, interest, costs of collection (including but not limited to reasonable attorney's fees actually incurred, whether or not suit is filed) and if the Board so elects, rents, shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment became due and shall be a charge and continuing lien on the Lot against which each assessment is levied and on any rents and insurance proceeds received by the Owner relating to the Owner's Lot. The lien for assessments, when delinquent, may be enforced as provided under Tennessee law, including foreclosure in the



same manner as Mortgages are foreclosed under Tennessee law. Upon conveyance of a Lot, the grantor and grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of such conveyance.

— No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, the Association's failure to perform its obligations required hereunder, inconvenience or discomfort arising from the Association's performance of its duties, or any post-construction matters relating to an Owner's Townhome, such as punchlist or warranty issues, that involve such Owner and the Developer and are not related to the duties and obligations of the Association.

(g) *Delinquent Assessments.* All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(i) ~~ⓧ~~ If any monthly installment of annual assessments or any part thereof is not paid in full by the 10th day of the month or if any other assessment is not paid within 10 days of the due date, a late charge equal to the greater of Twenty-Five Dollars (\$25.00) or 10% of the amount not paid, or such higher amounts as may be authorized by law, may be imposed without further notice or warning to the delinquent Owner, and interest at the highest rate permitted by Tennessee law and adopted by resolution of the Board shall accrue from the due date.

(ii) If assessments, fines or other charges or any part thereof due from an Owner remain delinquent and unpaid for a period greater than 15 days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment, fine or charge remains delinquent for more than 10 days from the date of the notice of delinquency, the Board may accelerate and declare immediately due all of that Owner's unpaid installments of such assessment. If an Owner fails to pay the entire assessment and related charges currently due within 10 days of the date of the notice of delinquency, the Board may then accelerate and declare immediately due all installments of such assessment, without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in monthly installments for that fiscal year.

(iii) If assessments and other charges or any part thereof remain unpaid more than 30 days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, and Tennessee law, and suspend the Owner's right to vote in the Association.

ⓧ (h) *Working Capital Fund.* Upon acquisition of record title to a Lot by the first Owner thereof other than Developer and every subsequent Owner thereafter, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to (i) One Thousand and No/100 Dollars (\$1,000.00) or (ii) one-sixth (1/6) of the annual assessment levied against the Lot for that year, whichever amount is greater. This amount shall be in addition to, not in lieu of, the annual assessment levied against the Lot and shall not be considered an advance payment of such assessment. This amount shall be collected at closing on each Lot and disbursed to the Association for deposit to a segregated fund for use in covering the Association's initial purchase of equipment and personal property in connection with the maintenance and operation of the Common Properties and the performance of the Association's

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other responsibilities hereunder, unforeseen expenditures, or the purchase of additional equipment or services. The working capital fund shall not be used to defray any of Developer's development expenses, construction costs, or other financial obligations to the Association during the Developer Control Period.

6. INSURANCE AND REPAIR.

(a) *Owner's Responsibility.* Each Owner shall obtain fire and extended coverage insurance on such Owner's Townhome in an amount which shall be equal to the maximum insurable replacement value as determined annually by the Association and shall annually provide the Association with a certificate evidencing the existence of such insurance. Each Owner shall purchase public liability insurance in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) or as otherwise determined by the Association to protect against claims due to accidents on the Owner's Lot and the Common Properties, and annually provide the Association with a certificate evidencing the same. Payment of any claim for damage or loss to a Lot and/or Townhome shall be used exclusively for the purpose of repairing and restoring such damaged Lot and/or Townhome in its entirety.

(b) *Repair.* The right is hereby given to the Association to require the Owner of a Lot, within sixty (60) days from the event which caused damage or loss to the Lot or Townhome located thereon ("Causing Event"), or within sixty (60) days of the settlement of any insurance, liability or condemnation claim, if later, but only if such claim is promptly made and diligently pursued by Owner and in no event more than nine (9) months after the Causing Event, to make repairs or replacement to restore the Lot and/or Townhome substantially to the condition existing prior to the Causing Event. If the Lot and/or Townhome are not so repaired or restored, the Association may perform the obligations of the Owner hereunder and all costs thereof, including reasonable attorney's fees actually incurred, may be assessed against the Lot and may be collected as an assessment pursuant to this Declaration.

7. ARCHITECTURAL CONTROLS.

(a) *Exterior Alterations, Maintenance and Repair.*

(i) The following maintenance and repair tasks must be performed contemporaneously and in unison on Townhomes in a single Townhome Pod with such timing in performing these tasks determined by mutual agreement of all Townhome Owners in the Townhome Pod in question: (i) replacement of the roof, any related roof element, including but not limited to, the parapet, cornice, and metal coping crowning the exterior surface of a Townhome's perimeter walls, and the brick, wood, stone, stucco, or other material comprising the exterior surface of the Townhome's perimeter walls, and (ii) cleaning and painting of all exterior surfaces of the Townhome's perimeter walls. Each Townhome Pod will decide for itself whether and when to perform these tasks by majority vote among Owners within such Townhome Pod, and if any Townhome Pod decides (by such majority vote) to perform such tasks then such decision shall be binding on all Owners within such Townhome Pod, and each Owner in a Townhome Pod performing the tasks is obligated to pay its share of the tasks. If a majority of the Owners in a Townhome Pod cannot agree as to when and how to complete the foregoing tasks, the Board shall have the authority on its own initiative to make such determination and the subject

Owners shall be bound by the decision made by the Board. The cost for any such tasks must be quoted in a manner that allocates the total cost amongst the individual Townhomes in the Townhome Pod, and each Owner in the Townhome Pod will pay the amount that is allocated to his/her Townhome. The costs of performing any of these tasks shall be deemed a special assessment and shall benefit from the provisions of this Declaration pertaining to same including the right to place a lien on a Townhome in the event of non-payment. Based on the foregoing, in the event a casualty causes damage to one or more but less than all of the Townhomes such that repair or replacement is required only for those Townhomes damaged, then such event shall not require the Townhomes unaffected by the damage to participate in such repair or replacement.

(ii) All maintenance and repairs to the Townhomes, including, but not limited to, repair, maintenance and replacement of roofs, roof elements (including, but not limited to, the parapet, cornice, and metal coping crowning the exterior surface of a Townhome's perimeter walls), and the brick, wood, stone, stucco, or other material comprising the exterior surface of the Townhome's perimeter walls, whether caused by casualty or not, shall be the responsibility of each Owner, and the Association shall not carry insurance coverage for such maintenance or repair or collect and/or maintain a reserve account for any such items. In the event of casualty causing damage to a Townhome, the Owner of such Townhome shall be required to repair and restore the Townhome to its condition prior to the casualty. Each Owner shall have the responsibilities for the maintenance, repair and replacement of party walls as set forth in this Declaration.

(iii) All exterior architectural and aesthetic elements and characteristics of the Townhomes shall remain unchanged from their appearance as initially constructed so as to preserve the continuity and uniformity of the Townhomes, except that Owners may make aesthetic exterior changes so long as the changes are uniform to all Townhomes and are approved by the Board or its designee in accordance with the procedures set forth below. Except as provided herein, no Owner, occupant, or any other Person except the Association may make any encroachment onto the Common Properties, or make any exterior change, alteration (including landscaping), or addition to its Lot, Townhome, or to the Common Properties, nor erect, install, place or post any object, sign, flag, light, sculpture, artificial or real vegetation, storm door or window, door knob or knocker, or other thing on the exterior of the building or on any portion of the Development visible from outside of a Townhome, without first obtaining the written approval of the Board or its designee in accordance with the procedures set forth below..

(b) *Alterations Within Townhomes.* Owners may make any improvements, renovations, or alterations within their Townhomes that do not conflict with the requirements of this Declaration, including specifically subparagraph (a) above, or any agreement entered into with Developer, provided that they do not impair the structural integrity of any Townhome or any portion thereof or otherwise materially lessen the support of any portion of adjoining Townhomes. Prior to undertaking any structural alteration or any alteration for which a building permit is required, the Owner shall notify the Board or its designee and provide the Board or its designee with evidence reasonably acceptable to it that the proposed improvements, renovations,

or alterations will not so impair the structural integrity of any structure or lessen the support of any portion of adjoining Townhomes.

(c) *Application Procedures.* Applications for approval of any such architectural modification shall be in writing and shall include detailed plans and specifications for the proposed modification, addition, or alteration and such other information as the Board or its designee may reasonably require. The Board or its designee may publish written standards for permitted alterations or additions and any request in substantial compliance therewith shall be approved. Otherwise, the Board or its designee shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board or its designee may consider, but shall not be limited to consideration of, uniformity of appearance with the rest of the Development, the quality of the proposed work, the materials to be used, and harmony with the design of other portions of the Townhome. After final plans and specifications have been approved, no changes may be made in the approved plans or specifications without the consent of the Board or its designee.

(d) *Limitation of Liability.* In reviewing and approving applications hereunder, neither the Board nor its designee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board, its designee, nor any member of any of the foregoing, shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications.

(e) *No Waiver of Future Approvals.* Each Owner acknowledges that the members of the Board and any committee that it may designate to exercise its authority under this Section will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or its designee of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board or its designee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(f) *Enforcement.* Any construction, alteration, or other work done in violation of this Section shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to institute judicial proceedings and thereafter to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the Lot whose Owner or occupant is responsible for the violation and may be collected as an assessment pursuant to this Declaration.

In addition to the foregoing, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Section and decisions made hereunder.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon a Lot in violation of this Section, he or she does so at his or her sole risk and expense.

8. RESTRICTIONS ON USE, CONDUCT, AND OTHER MATTERS.

(a) *Residential Use.* Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or upon a Lot, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing on a Lot may conduct such ancillary business activities so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Townhome; (ii) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers or other business invitees; (iii) the business activity conforms to all zoning requirements for the Development; (iv) the business activity does not increase traffic in the Development; (v) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; and (vi) the business activity is consistent with the residential character of the Development and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Development, as may be determined in the sole discretion of the Board.

(b) *Timesharing.* No Lot shall be made subject to any type of timesharing, fraction-sharing, residence club, or similar program whereby the right to exclusive use of a Lot rotates among members of the program on a fixed or floating time schedule or otherwise in accordance with a written agreement or established rules providing for allocation of the exclusive use of the Lot among participants in the program.

(c) *Animals and Pets.* No animals, reptiles, birds, or other non-human living creatures shall be raised, bred, or kept on any part of the Development, except that dogs, cats, birds, fish, or other usual and common household pets, not to exceed a total of two, may be kept in a Townhome, provided that such pets are not kept, bred, or maintained for any commercial purpose, do not endanger the health or unreasonably disturb the Owner or occupants of any other Lot, and do not create a nuisance.

At all times when pets are outside a Townhome (with exception to a properly fenced front-yard), they must be kept on a leash and under the complete physical control of a responsible person. In addition, said responsible person shall remove any animal waste left by his or her pet on any part of the Property. The keeping of pets and their ingress, egress, and travel upon other Lots and Common Properties shall be subject to the Rules and Regulations promulgated by the Board. Failure to comply with this restriction or such Rules and Regulations shall be grounds for the Board to bar the pet from use or travel outside of its Owner's Lot.

✓(d) *Signs.* No Person shall erect, post, or place any sign of any kind on a Lot, with the exception of a customary "For Sale" sign or the Board's prior approval.

(e) *Rubbish, Trash, and Garbage.* All trash, rubbish, and garbage shall be placed in receptacles which remain inside garages until the day of garbage pick-up.

(f) *Nuisance.* No Person shall make use of any Lot or any portion of the Development in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or occupants of any Townhome, or which constitutes, in the Board's opinion, a nuisance; provided, however, the use associated with the initial construction of the Development by Developer shall not be deemed a nuisance to other Owners. No Owner or occupant shall do, keep, or store anything on the Development which would increase insurance rates or which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, without the prior approval of the Board.

(g) *Unightly or Unkempt Conditions.* The pursuit of hobbies or other activities, such as, but not limited to, the assembly and disassembly of mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Development.

(h) *Window Treatments.* No blinds, shades, screens, decorative panels, or other window treatments or coverings, except for draperies in or lined with white, off-white, or light beige, or vertical or horizontal blinds in white, off white or light beige, shall be attached to, hung, or used in connection with any window or door in a Townhome in such a manner as to be visible from outside of the Townhome, without the Board's prior written consent.

(i) *Noise.* No Owner or Occupant of a Townhome may use or allow the use of a Lot or any portion of the Common Properties between the hours of 11:00 p.m. and 7:30 a.m. in any manner which creates levels of noise that can be heard by persons in another Townhome or that, in the opinion of the Board, interferes with the rights, comfort or convenience of the other Owners or occupants of the Development.

(j) *Parking.* Owners and occupant(s) of a Townhome may not park trucks with a load capacity of one ton or more, full-size vans (excluding mini-vans used as passenger vehicles), vehicles used primarily for commercial purposes, vehicles with commercial writings on their exteriors, disabled and stored vehicles, boats, boat trailers, recreational vehicles, and motor homes, on the parking spaces located upon their respective Lot(s). This restriction shall not preclude (i) occasional guests from parking overnight in the parking spaces of the Lot they are visiting, (ii) service and delivery vehicles from parking temporarily in the parking spaces during such time as is reasonably necessary to provide service or make a delivery to a Lot, and (iii) construction equipment and construction workers' vehicles from parking in the parking spaces during the day (but not overnight), provided that such parking does not unreasonably interfere with other Owners' access to and from their respective Lots.

Notwithstanding anything herein to the contrary, Owners and occupant(s) shall not park any vehicle on S. Crest Place, nor shall they park any vehicle in any area on the Property which prohibits or limits mail or garbage service to the Development.

For purposes of this subparagraph (j), a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Lot for twenty-one (21) consecutive days or longer without the prior written permission of the Board.

If any vehicle is parked on any portion of the Property in violation of this subparagraph (j) or in violation of the Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity that will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle. Notwithstanding this provision, if a vehicle is blocking a driveway, obstructing the flow of traffic, parked in a driveway or parking space located upon another Owner's Lot without authorization (except for the Parking Easement Area defined in Section 14(a)(vi) hereof), or otherwise parked in a manner that creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

(k) *Antennas.* No exterior television or radio antennas or satellite dish of any sort shall be placed, allowed, or maintained upon any portion of the Development, including any portion of any Townhome, unless otherwise approved by the Board in its sole discretion (which includes without limitation the right of the Board to dictate the size and location of such antenna or satellite dish and the person responsible for its installation). Notwithstanding the foregoing, Developer or the Association may install and maintain an aerial or other apparatus or cable for a master antenna, cable, or satellite system, should any such master system or systems be utilized and require any such exterior antenna, cable, satellite, or other apparatus.

(l) *Garage Sales.* Garage sales, carport sales, flea markets, and similar activities involving the outdoor display and sale of goods are prohibited on any portion of the Development, except as may be approved by the Board in its sole discretion.

(m) *Wireless Internet Systems.* A wireless Internet communications network ("WiFi System") may be installed or otherwise used in a Townhome provided precautions are taken to ensure against interfering with, disturbing, or intercepting computer, communications, or other permitted electronic signals, networks, or systems installed in other portions of the Development. The Association may establish reasonable requirements relating to the installation of WiFi Systems that must be complied with, including, without limitation, requiring assurance from the installer of the system that proper precautions are being taken.

Notwithstanding the above, compliance with requirements relating to the installation of WiFi Systems is not a guarantee that any WiFi System installed or otherwise used in any Townhome will not interfere with, disturb, or intercept other signals, networks, or systems. Each Owner is responsible for insuring that the WiFi System installed or otherwise used in his or her Townhome does not so interfere with, disturb, or intercept other signals, networks, or systems within the Development. The Association may require that any WiFi System found to cause such problems be terminated.

(n) *Landscaping.* No Person shall change the original landscaping of the front yard of a Lot (which includes without limitation adding or removing landscape elements) without the prior written approval of the Board.

(o) *Termite Control.* Annual termite contracts are to be kept in force by each Owner with a pest control company of their choice, and each such Owner shall annually provide a certificate evidencing same to the Secretary of the Association. This is to insure that no termite damage will occur between Townhomes.

9. OCCUPANCY OF LOTS.

(a) *Restriction on Number of Occupants.* Occupancy of each Lot shall be limited to that number of persons equal to the number of bedrooms in the Townhome plus one (1) additional person. For purposes of this subparagraph (a), "occupancy" means staying overnight in a Townhome for a total of more than (thirty) 30 days, either consecutive or nonconsecutive, in any calendar year.

(b) *Restriction on Occupancy by Certain Persons.* Notwithstanding the above, any person who (i) has been convicted of a criminal offense against a victim who is a minor, or convicted of a sexually violent offense against any person, and (ii) is or would be, within a specified time frame, required to register as a sex offender under federal, state, or local law or ordinance, may not occupy any Townhome in the Development, temporarily or permanently. Notwithstanding this restriction on occupancy, the Developer, the Association, and their respective members, principals, officers, directors, managers, representatives, agents, or employees, shall have no duty to monitor available databases, conduct background checks on purchasers or prospective purchasers or on occupants or prospective occupants of Townhomes, or otherwise investigate the status of any person or the eligibility of any person to occupy a Townhome, and shall have no liability to any person for any loss, injury or damage of any kind or character arising out of the actions of any person who occupies a Townhome, even if such occupancy is in violation of this paragraph. Public information, registries and databases providing information on registered persons are accessible to any Owner, occupant or other person who is concerned about such matters. The Association is not a guardian or insurer or guarantor of any person's safety in the Development. Owners and occupants are advised that to take appropriate steps to inform themselves, to be aware that there may be other persons within or outside the Development who could pose risks to their safety that may not be registered sex offenders, and to take such precautions as may be appropriate to protect themselves and their families from such risks.

10. LEASING.

(a) *Leasing Defined.* For purposes of this Declaration, "leasing" means regular, exclusive occupancy of a Lot by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Notwithstanding the foregoing, for purposes of this Section 10, the occupancy of a Lot by a foster child living with an Owner for which the Owner receives a fee shall not be considered a lease of the Lot.



(b) *Restrictions and Limitations.* Lots may be leased only in their entirety; no fraction or portion consisting of less than the entire Lot may be leased. All leases must be for an initial term of not less than (twelve) 12 months; provided, however, that the Board shall have the power to allow leases for an initial term of less than (twelve) 12 months, on such terms and conditions as the Board may establish, upon a showing by the Owner that such a lease is required to avoid undue hardship to the Owner.

(c) *Requirements.* All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board shall maintain in its files and, upon request, shall provide to any Owner a form which it deems acceptable. At least seven (7) days prior to executing a lease agreement for the lease of a Lot, the Owner shall provide the Board of Directors with a copy of the lease and the name of the lessee and all other people occupying the Lot. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Rules and Regulations.

(d) *Specific Lease Provisions.* Any lease of a Lot shall specifically reference the occupancy requirements and restrictions set forth in Section 9 herein and shall be deemed to contain the following provisions, whether or not expressly stated therein, and each Owner and each lessee, by occupancy of a Lot, covenants and agrees that any lease of a Lot shall contain the following provisions and agrees that if such provisions are not expressly contained therein, then such provisions shall be incorporated into the lease by existence of this covenant on the Lot:


(i) *Compliance With Development Instruments.* The lessee shall comply with all provisions of the Development Instruments and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure compliance with the foregoing. In the event that the lessee, or a person living with the lessee, violates the Development Instruments for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine shall be assessed against the lessee in accordance with the By-Laws. Any violation of the Development Instruments by the lessee, any occupant, or any person living with the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Tennessee law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Development Instruments, including the power and authority to evict the lessee, as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the lessee, any costs, including attorneys fees and court costs, associated with the eviction shall be an assessment and lien against the Lot.

(ii) *Liability for Assessments.* When an Owner who is leasing his or her Lot fails to pay any assessment or any other charge for a period of more than 30 days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall

pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(e) *Violations.* The Owner shall cause all occupants of his or her Lot to comply with the Development Instruments, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be sanctioned for any violation of the Development Instruments. In the event that the lessee, or a person living with the lessee, violates the Development Instruments and a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine shall be assessed against the lessee in accordance with the By-Laws. If the lessee does not pay the fine within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

11. TRANSFER OF TITLE TO LOTS.

 An Owner intending to sell or otherwise transfer title to a Lot shall give written notice to the Board of such intention within 10 days after entering into any agreement to sell or transfer the Lot. The Lot Owner shall furnish to the Board as part of the notice (i) the name and address of the intended grantee; and (ii) such other information as the Board may reasonably require. This Section shall not be construed to create a right of first refusal in the Association or in any third party.

Within 10 days after taking title to a Lot, the new Owner shall give written notice to the Board of his or her ownership of the Lot. Upon failure of a Owner to give the required notice within the 10-day time period provided herein, the Board may levy fines against the Lot and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

12. MAINTENANCE RESPONSIBILITY.

(a) *Association's Obligations.* Except as otherwise specifically provided in this Section 12, the Association shall maintain and keep in good repair, as a Common Expense, the Common Properties and the improvements listed in Section 5(a) hereof.

The Association shall not be liable to any Owner, or any Owner's occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. The Association shall not be liable for injury or damage to any person or property caused by the elements or by any Owner, or any other person, or resulting from any utility, rain, snow, or ice, which may leak or flow from any portion of the Common Properties or from any pipe, drain, conduit, appliance, or equipment which is the responsibility of the Association to maintain.

If the Board determines that the need for maintenance or repair which is the Association's responsibility hereunder is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or occupant's Lot, and said cost shall

become a lien against the Lot if unpaid and shall be collected as provided herein for the collection of Assessments.

(b) *Owner's Obligations.* Each Owner shall have the obligation to maintain, keep in good repair, and replace as necessary all portions of his or her Lot, including the Townhome located thereon. Each Owner shall promptly report to the Association or its agent any defect or need for repairs, the responsibility for the remedying of which is that of the Association, pursuant to subparagraph (a) above.

13. DEVELOPER RIGHTS.

Notwithstanding anything to the contrary contained elsewhere in this Declaration or any other Development Instrument, Developer shall have the following rights:

(a) *Development and Sale Rights.* Developer hereby reserves for itself and its duly authorized agents, representatives, and employees, an easement over, under, across, and to the Development for the purpose of construction and improvement of Lots, Townhomes, Common Properties, and common facilities, provision of warranty services to Owners, maintenance of sales or leasing offices, management offices, signs, and models on the Development, and carrying on sales and marketing activities in connection with the Development for so long as Developer owns any Lot, unless such easement is sooner relinquished in writing signed by Developer. Developer further reserves the right to grant licenses to non-Owners for use of the Common Properties, or portions thereof, provided that such non-Owners are obligated to pay an equitable share of the Common Expenses attributable to said uses. The Developer may maintain one or more offices and models on any Lot for so long as Developer owns a Lot. There shall be no limit on the number, size, location, or relocation of such offices and models. Developer also reserves the right to install and to grant easements for the installation and maintenance of utilities over, under, and through the Lots which it owns. This subparagraph shall not be amended, nor shall the rights of Developer or its affiliates hereunder be further restricted, without the prior written consent of Developer.

(b) *Right to Appoint Association's Directors and Officers.* So long as Developer owns a Lot or the Open Space Community Lot (the "Developer Control Period"), unless otherwise surrendered sooner by Developer in its sole discretion, Developer shall have the right to appoint and remove the members of the Board of Directors and officers of the Association as provided in the By-Laws.

(c) *Right to Modify Lots.* Developer hereby reserves the right, exercisable at its sole option, to combine, expand, modify, reconfigure, subdivide, or relocate the boundaries of any unsold Lots. Upon any modification or reconfiguration, Developer shall record an amended plat or a supplemental or amended Declaration to reflect same.

(d) *Reserved Rights.* So long as Developer owns a Lot, and notwithstanding the surrender of its right to appoint and remove members of the Board of Directors, Developer reserves the right to approve, in its sole discretion, any amendment to this Declaration for such amendment to be effective.

(e) *Sales and Leases.* Notwithstanding anything to the contrary contained herein, Developer shall have the right to sell or lease Lots and to erect and maintain signs to facilitate

such sales or leases as it, in its sole discretion, deems appropriate, and shall not be required to comply with the provisions of this Declaration or any Association rules and regulations regarding signs, sales, and leases.

(f) *Central Telecommunication, Receiving, and Distribution System.* Developer reserves for itself, successors, and assignees, the exclusive and perpetual right and easement to operate within the Development a central telecommunication (including cable television, satellite television, and security monitoring) receiving and distribution system, including conduits, wires, amplifiers, towers, antennae, and other related apparatus and equipment (the "Community Systems") as Developer, in its discretion, deems appropriate. Such exclusive and perpetual right shall include, without limitation, Developer's right to select and contract with companies (which contracts may be entered into on behalf of or assignable to the Association) to install, operate, and maintain Community Systems and to arrange for the provision of telecommunications and cable and satellite television service in the area, to grant easements to such companies for such purposes, and to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of relevant government authority, if applicable.

In recognition of the fact that interruptions in cable and satellite television and other Community Systems services will occur from time to time, neither Developer nor any of Developer's successors or assigns shall in any manner be liable for, and no Community System user shall be entitled to refund, rebate, discount, or offset in applicable fees, for any interruptions in Community Systems services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

14. EASEMENTS.

(a) *Creation.* The following easements are created by this Declaration for the benefit of the Association, each Owner and each Owner's heirs, successors, assigns, tenants, guests, invitees, agents and employees:

(i) perpetual, non-exclusive easements of ingress and egress to, through and over the area designated on the Plat as "25' Ingress/Egress Easement" and all other driveways, entrances, exits and access ways installed (or to be installed) on a Lot that are designed and constructed to provide access between the Lots and access to and from the Lots and public streets (but excluding parking spaces);

(ii) perpetual, non-exclusive easements of access to, in and over such portions of an adjoining Lot or Townhome, as may be reasonably necessary for construction or maintenance of improvements on the Lot benefited thereby. Any costs or damages to the Lot on which the easement is imposed shall be paid by the Owner of the Lot benefited thereby;

(iii) perpetual, non-exclusive easements upon, through, under, above and across all areas designated on the Plat as a "Public Sanitary Sewer Easement" or "Power & Communication Easement," for the installation, maintenance, repair, operation, removal and replacement of lines, pipes, wires, equipment, fittings, connections and related facilities and fixtures as necessary to provide drainage, sanitary sewer, power,

communications and other utility services (including electricity, domestic and fire service water, gas, telephone and other communication services, cable TV services, internet access services, heating, ventilating, air conditioning, security services, drainage and sanitary sewer, trash collection and removal and any other services to the Property similar to the foregoing);

(iv) perpetual, non-exclusive easements upon, through, under, above and across each Lot for the installation, construction, maintenance, repair, removal and replacement of foundations, footings, walls, floor slabs and other structural components and supports as are reasonably necessary in connection with the construction of the Townhomes and related improvements to be located on the Property. Any costs or damages to the Lot on which the easement is imposed caused by the maintenance, repair, removal or replacement of such structural components and supports shall be paid by the Owner of the Lot benefited thereby. The design, configuration, location and manner of installation, maintenance and repair of such foundations, floorings, walls, floor slabs and other structural components and supports to be located on the Property shall be subject to the prior review and approval of the Developer for so long as the Developer owns a Lot and thereafter shall be subject to the prior review and approval of the Association;

(v) perpetual, non-exclusive easements over the Property for the installation and maintenance of traffic and other signs of general benefit to the Property and the Owners and their respective heirs, successors, assigns, tenants, guests, invitees, agents and employees; and

(vi) perpetual, non-exclusive easements upon, over, and across: (1) the two (2) southernmost parking spaces located upon Lot 3, and (2) the two (2) northernmost parking spaces located upon Lot 9 (collectively, these four parking spaces constitute the "Parking Easement Area"). The Parking Easement Area serves as a general parking area for the benefit of Owners and occupants in the Development on a first-come, first-served basis; provided, however, no vehicle(s) shall be permitted to remain upon any portion of the Parking Easement Area for a period longer than seventy-two (72) hours without the express written permission of the Board.

(b) *Landscaping Easements.* The following easement is created by this Declaration for the benefit of the Association, its agents and employees: perpetual, non-exclusive easement of access to, upon, through, under, above and across: (i) the front yards (northwestern side of each Townhome) of each Lot, (ii) the yard between the northeastern exterior wall of the Townhome located on Lot 8 and said Lot's northeastern boundary line, and (iii) the yard between southwestern wall of Lot 14 and said Lot's southwestern boundary line, for the purpose of installing, maintaining, and replacing any and all landscaping located thereon.

(c) *Terms of Easements.* The easements created by this Section 14 are perpetual and shall remain in full force and effect, notwithstanding the revocation or termination of this Declaration or the dissolution of the Association, until and unless revoked or amended in writing by all Owners and recorded in the Register's Office of Hamilton County, Tennessee.

(d) *Additional Easements; Maintenance of Easements.* In the event Developer or its successors and assigns hereunder arrange for the dedication of any utility lines and easements to

the appropriate utility company, applicable governmental authority or other provider, and such dedication is reasonably necessary in connection with the use and operation of the Lots to be served thereby, the Owners of those Lots shall dedicate and grant such easements upon and across the Lots as shall be reasonably required by such utility company, governmental authority or other provider and in such form of easement as Developer or its successors and assigns may reasonably require. To the extent any utility lines and/or equipment installed and located on the Property (e.g., HVAC equipment) serve more than one Lot, the costs of maintaining and repairing such common lines and/or equipment shall be paid by the Association and charged to the Owners of those Lots based on the amount of each benefited Owner's individual use of such facilities relative to the total use thereof by all benefited Owners thereof. The Association shall reasonably determine the appropriate allocation of such repair and maintenance costs to and among the benefited Owners.

(e) *Easements Run with the Land.* The easements herein created shall be effective as of the date hereof and shall run with the land and constitute an appurtenant benefit to the Lots and a servitude upon the Property, except that the common footings, foundation and structural easements provided in Sections 14(a)(ii) and (iv) above shall constitute mutual and reciprocal appurtenant benefits to and servitudes upon each of the Lots and the Property in accordance with their terms.

(f) *No Public Dedication.* This instrument is not intended, and it shall not be construed, to dedicate any easements to the general public.


(g) *No Unreasonable Interference.* The easement rights and benefits granted and created hereunder shall be exercised by the beneficiaries thereof in such a manner as to avoid unreasonable interference with the normal use, operating and enjoyment of the burdened tenement, consistent with the intent of this Declaration.

(h) *Easement of Encroachment.* Developer hereby creates and grants reciprocal appurtenant easements of encroachment between adjacent Lots and between any Lot and any adjacent Common Property, for maintenance and use of any encroachment which occurs due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(i) *Utilities.* To the extent that any sprinkler system or any sprinkler room, electrical room, telephone equipment, telephone trunk line, utility line, pipe, wire, or conduit serving any Lot or Common Property shall lie wholly or partially within the boundaries of another Lot or the Common Property, or shall only be accessible from another Lot, such other Lot or Common Property shall be burdened with an easement for the use, access, maintenance, repair, and replacement of such sprinkler system, electrical room, telephone equipment, telephone trunk line, utility line, pipe, wire or conduit, such easement to be in favor of the Association and the Lot or Common Property served by the same. It shall be the obligation of the benefited Owner to maintain, replace, and repair any pipe, line, conduit, duct, or wire owned by such Owner, even if such pipe, line, conduit, duct, or wire is located within the boundaries of the Lot of another Owner. In such circumstance, the benefited Owner shall repair all incidental damage to any Lot

or the Common Property resulting from performance of any such work. All Owners hereby covenant and agree that as finished levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Components that may require repair or replacement, such as tile or trim, will be reinstated only to the extent that matching or similar materials are readily available at reasonable costs, as determined in the sole discretion of the Board.

15. AMENDMENTS.



(a) *General.* Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote or written consent (as provided for in the By-Laws) of the members of the Association holding at least 67% of the total eligible vote of the Association. Approval of an amendment may be obtained by affirmative vote at a meeting, by written or electronic ballot, by a combination thereof, or by any other means authorized pursuant to the By-Laws. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President of the Association and recorded.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

(b) *Amending Developer Rights.* No amendment which purports to or does increase or otherwise modify the obligations the Declaration imposes on Developer or decrease, limit, or otherwise modify rights the Declaration grants to Developer, including development rights, shall be valid without Developer's express, written consent. In addition, no amendment which purports to or does increase the Developer's development rights shall be valid without at least 67% of the total eligible votes of the Association other than those votes held by the Developer.

16. GENERAL PROVISIONS.

(a) *Duration.* The Covenants of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Board, the Association, the Developer or Owner of any Lot, subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

(b) *Compliance and Enforcement.* Each Owner shall comply, and shall be responsible for ensuring that the Owner's family, guests, tenants and occupants comply, with all provisions of the Development Instruments and the Rules and Regulations. Furthermore, each Owner and occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants, or occupants in the event of any such person's violation of the Development Instruments, the Association may take enforcement action as authorized in this Declaration and the By-Laws against the Owner as if the Owner committed the violation in conjunction with such person. An aggrieved Owner shall also have standing to enforce the Development Instruments and the Rules and Regulations by action at law or in equity.

In addition to any other remedies provided in the Development Instruments, the Association may enforce the Development Instruments by an action to recover sums due, for damages or injunctive relief, or by any other remedy available at law or in equity. The failure to take enforcement action in the case of a violation of any provision of the Development Instruments shall not constitute a waiver of the right to enforce subsequent violations of the same provision or rule thereafter.

No liability shall be imposed on or incurred by the Association or the Board for failure to enforce a violation of the Development Instruments. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

The prevailing party in any action at law or in equity shall be entitled to all costs incurred in connection therewith, including without limitation, reasonable attorneys fees.

(c) *Dispute Resolution.* Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, an Owner or Occupant must request and attend a hearing with the Board. Any such request shall be in writing and shall be personally delivered to any member of the Board or the property manager, if any, of the Association. The Owner or Occupant shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time, and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than 7 nor more than 21 days from the date of receipt of the request.

(d) *No Discrimination.* Neither the Association nor the Board shall discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status, or handicap.

(e) *Implied Rights.* The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws, the Articles, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

(f) *Severability.* Invalidation of anyone of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.



(g) *General Disclosures.*

(i) *Mold and Mildew.* Molds, fungi, mildew, and other mycotoxins can grow in any portion of the Development that is exposed to elevated levels of moisture. Each Owner and occupant shall notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in the parts of the Development that he or she maintains. It is the Owner's responsibility to keep its Townhome clean, dry, well-ventilated, and free of contamination. Each Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. Each Owner, by acceptance of a deed or other conveyance of a Lot, holds Developer, the Association, and their members, officers, directors, employees, and agents harmless from and against any and all claims made by the Owner, the Owner's guests, tenants, and invitees on account of any illness, allergic reaction, personal injury, or death to such persons and to any pets of such persons.

(ii) *Views.* Each Owner and occupant acknowledges that no representations or guarantees have been or will be made by the Developer as to the nature or extent of views from any Lot or any other portion of the Development, nor are any representations or guarantees made that the view from the Lot or any other portion of the Declaration will be maintained or unobstructed. Future development in the vicinity of the Development could obstruct views from the Lot.

(iii) *Neighboring Properties.* All neighborhoods are impacted by conditions which different people may find objectionable. Each Owner and Occupant acknowledges and agrees that there may be conditions outside of the Development which he or she may find objectionable and that it shall be the Owner's or Occupant's sole responsibility to be acquainted with neighborhood conditions which could affect the use and enjoyment of his or her Lot. No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

(iv) *Other Disclosures.* Each Owner and Occupant further acknowledges the following:

(A) Townhomes may trap humidity created by every day living (cooking, bathing, laundering, etc.). As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by the Owner, the condensation may increase, resulting in staining, damage to surrounding seals, caulk, paint, wood work, and sheetrock, and potentially mold and/or mildew.

(B) Soil erosion and flooding problems around site walls may naturally occur over time.

(C) The Townhomes may be subject to water infiltration, particularly along foundation walls or in garage areas, during intense or prolonged periods of rain and/or wind.

(D) Windows, exterior doors, and louvers may leak during or after storms with high winds and/or heavy rain.

IN WITNESS WHEREOF, Developer has executed this Declaration on the date first written above.

**BRAGG POINT PROPERTIES, LLC**, a  
Tennessee limited liability company

By: Rebecca F. Browder  
Name: Rebecca F. Browder  
Title: Vice President

STATE OF TENNESSEE )

COUNTY OF HAMILTON )

Before me, Kristi McCreary, a Notary Public in and for the state and county aforesaid, personally appeared Rebecca Browder, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself/herself to be the Vice President of BRAGG POINT PROPERTIES, LLC, a Tennessee limited liability company, and that she/he, in such capacity, and being duly authorized, executed the foregoing instrument on behalf of said entity for the purposes therein contained.

WITNESS my hand, at office, this 20th day of October, 2011

Kristi McCreary  
Notary Public of  
STATE OF TENNESSEE  
My Commission Expires  
[Notarial Seal]  
HAMILTON COUNTY  
5/23/2012

**CONSENT AND SUBORDINATION BY LENDER**

The undersigned, **FIRST VOLUNTEER BANK OF TENNESSEE**, possessing security interests in the Property (as more particularly described in the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for The Brownstones at Bragg Point (the "Declaration")) pursuant to (i) those certain Deeds of Trust recorded in Book 8558, Page 763, Book 8777, Page 112 and Book 8804, Page 4, all in the Register's Office of Hamilton County, Tennessee, as the same have been or may be modified or amended (collectively the "Deeds of Trust"), and (ii) any other deeds of trust, assignments of rents and leases or other security documents recorded in the aforesaid register's office (the Deeds of Trust and all of the other foregoing instruments collectively referred to as the "Security Documents") hereby (a) consents to, approves, and acknowledges the execution and recording of this Declaration, (b) except as otherwise expressly provided in this paragraph, subordinates any and all liens it holds against the Property to this Declaration, which subordination shall be effective against any and all amendments to such liens, (c) agrees that this subordination shall automatically be effective against any and all additional real property hereafter made subject to this Declaration by amendments hereto (it not being necessary to obtain signature of First Volunteer Bank of Tennessee to any such amendment(s) to this Declaration bringing additional real property under the Declaration for this subordination to be effective against such additional real property); and (d) agrees that in the event of foreclosure of any such liens, it shall not disturb the duties, obligations, covenants, conditions, restrictions, rights and interests created and imposed under and pursuant to this Declaration. This consent and subordination is given for the sole purpose of consenting and subordinating the undersigned's liens on the Property to this Declaration. By subordinating its liens in the Property to this Declaration, the undersigned does not consent to any other matters.

**FIRST VOLUNTEER BANK OF TENNESSEE**

By: 

Print Name: Berry J. Grable

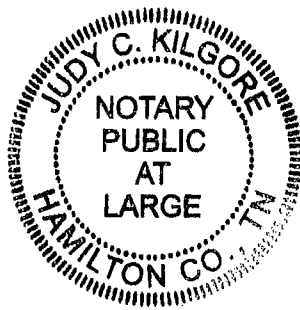
Title: Senior Vice President

STATE OF TENNESSEE )

COUNTY OF HAMILTON )

Before me, Judy C Kilgore, a Notary Public in and for the state and county aforesaid, personally appeared Betty J. Grable, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself/herself to be the Senior VP of **FIRST VOLUNTEER BANK OF TENNESSEE**, and that he/she, in such capacity, and being duly authorized, executed the foregoing instrument on behalf of said entity for the purposes therein contained.

WITNESS my hand, at office, this 18 day of NOV, 2011.



Judy C Kilgore  
Notary Public

My Commission Expires: 5/23/12  
[Notarial Seal]

**NOTE: This Lender Consent and Subordination is attached to and made part of the Declaration of Covenants, Conditions, Restrictions, and Easements for The Brownstones at Bragg Point.**

**EXHIBIT A**

**Legal Description of Property**

**Located in the City of Chattanooga, Hamilton County, Tennessee:**

**Lot One (1) - Open Space Community Lot, and Lots Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), and Fourteen (14), Bragg Point, Planned Unit Development, as shown by plat recorded in Plat Book 94, Page 85, in the Register's Office of Hamilton County, Tennessee;**

**The source of Developer's interest is found in deeds recorded in Book 8363, Page 189, Book 8212, Page 377, and Book 8085, Page 467, in the Register's Office of Hamilton County, Tennessee.**

**EXHIBIT B**

**By-Laws of The Brownstones at Bragg Point Homeowners Association, Inc.**

**(See Attached)**

**BYLAWS OF**  
**THE BROWNSTONES AT BRAGG POINT HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**  
**NAME**

The following provisions shall constitute the Bylaws of **THE BROWNSTONES AT BRAGG POINT HOMEOWNERS ASSOCIATION, INC.** (the "Bylaws"), a Tennessee nonprofit corporation (the "Association") which shall, along with the provisions of the Declaration of Covenants, Conditions, Restrictions and Easements for The Brownstones at Bragg Point, as the same may be amended from time to time (the "Declaration") and the rules and regulations adopted by the Board of Directors of the Association (the "Board"), govern the administration of The Brownstones at Bragg Point, a residential townhome development (the "Development"). Terms in these Bylaws (unless otherwise defined) shall have the same meaning as defined in the Declaration.

**ARTICLE II**  
**OFFICE**

The principal office of the Association shall be located at the following address:

The Brownstones at Bragg Point Homeowners Association, Inc.  
P.O. Box 813  
9129 Lee Highway  
Ooltewah, Tennessee 37363

or at such other place either within or without the State of Tennessee, as shall be lawfully designated by the Association or as the affairs of the Association may require from time to time.

**ARTICLE III**  
**PURPOSES**

The purposes of this Association shall be to provide for the establishment of a residents' association for the government of the Development in the manner provided by the Declaration, these Bylaws and in the Charter for the Association (the "Charter"; together with the Bylaws and Declaration the "Development Instruments"). The aims of this Association are to be carried out through any and all lawful activities, including others not specifically stated in the Development Instruments but incidental to the stated aims and purposes; provided that any such activity or contribution shall conform to any applicable restrictions or limitations set forth in the Charter or which are imposed on real estate homeowners' associations by the Internal Revenue Code of 1986 as amended and the regulations thereunder, as presently enacted or as they may hereafter be amended or supplemented. All present or future owners or tenants, or their employees, or any other person who might use the facilities on the Development in any manner, shall be subject to the covenants, provisions or regulations contained in the Declaration and these Bylaws, as

amended, and shall be subject to any restriction, condition or regulation hereafter adopted by the Association.

#### ARTICLE IV ASSOCIATION

4.01 Membership. Every person or entity who is a record Owner of a fee simple interest or an undivided fee simple interest in any Lot which is subject to the Declaration shall be a Member of the Association, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a member of the Association. Membership shall be automatically transferred to the new Owner upon the conveyance of any Lot and recording of the deed of conveyance in the Register's Office of Hamilton County, Tennessee. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

4.02 Voting Rights. Each Lot shall be entitled to one (1) vote. When more than one person holds an interest or interests in any Lot as Owner, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. A vote may be cast by the Owner of the Lot or by a lawful proxy. In the event the Owner is a corporation, partnership, trust, or other legal entity, other than a natural person, the vote may be cast by the President, managing partner, executor, or chief executive officer of such legal entity or his or her designee. When one or more co-owners signs a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of the other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in a written instrument delivered to the Secretary of the Association before the vote is counted. If co-owners disagree as to the vote, the vote shall not be counted.

No Owner shall be eligible to vote, either in person or by proxy, or to be elected to the Board, if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association, or is under suspension for the infraction of any provision of the Declaration, these By-Laws, or any rule applicable to the Development. If the vote attributable to a Lot has been suspended, neither the vote, the Lot to which it is attributable, nor the Owner thereof shall be counted for purposes of determining the number of eligible votes, Owners, or Lots with respect to any matter requiring approval under the Development Instruments.

#### ARTICLE V THE BOARD OF DIRECTORS

5.01 Board of Directors. Subject to Section 5.02 of this Article hereinbelow, the administration of the Property on behalf of the Association shall be conducted by a Board of Directors ("Board") which shall consist of three (3) natural persons of legal age, each of whom shall be an Owner or a member of the household of an Owner at all times during membership on the



Board; provided, however, no Owner and resident representing the same Lot may serve on the Board at the same time.

In the case of an Owner which is a corporation, partnership, limited liability company, trust, or other legal entity, the officer, director, partner, trustee, employee or other individual whom the Owner designates in writing to the Secretary of the Association as the representative of such Owner shall be eligible to serve as a director; provided, any such individual serving as a director shall be deemed to have resigned as a director upon the Association's receipt of notice from the designating Owner of termination of such individual's relationship with such Owner.

5.02 Developer Performs Functions. The rights, duties and functions of the Board shall be solely exercised by Developer until such time as the Developer calls a special meeting of the Association to elect a Board. Such election shall be conducted pursuant to Section 5.03 hereof.

5.03 Election. At each annual meeting the Association shall elect those members of the Board as required under Section 5.01 who shall serve the terms set out in Section 5.04; provided, however, the members of the Board elected to succeed the Developer shall be elected at a special meeting duly and specifically called for that purpose by the Developer. Following election of the initial Board, nomination for a position on the Board may be made by petition filed with the Secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by two (2) or more Owners and by the nominee named therein indicating his willingness to serve as a member of the Board, if elected.

5.04 Term. Members of the Board shall serve for a term of one (1) year or until their respective successors are duly elected and qualified, or until their death, resignation or removal.

5.05 Resignation and Removal. Any member of the Board may resign at any time by giving written notice to the President. Any member of the Board may be removed from membership on the Board by the approval of sixty-seven percent (67%) of the eligible votes within the Development, except that a vacancy on the Board shall be deemed to exist in the event of the death of a member, the disability of a member which, in the opinion of a majority of the Board, renders such member incapable of performing Board duties, or in the event a member shall cease to be an Owner. Whenever there shall occur a vacancy on the Board for any reason, the remaining members shall elect a successor member to serve until the next annual meeting of the Association or until a special meeting is called for filling vacancies, at which time said vacancy may be filled by the Association for the unexpired term.

5.06 Compensation. The members of the Board shall receive no compensation for their services but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties.

5.07 Powers and Authority of the Board. The Board, for the benefit of the Development and the Association, shall enforce the provisions of the Declaration, these Bylaws,

and the Rules and Regulations governing the Development. Subject to any provision herein, the Board shall have the power and authority to acquire and pay for the following, which shall be deemed Common Expenses of the Association:

- A. Any expense permitted under the Declaration.
- B. Water, sewer, garbage collection, electrical, telephone and gas and other necessary utility services for the Common Properties.
- C. Legal and accounting services necessary or advisable in the operation of the Property and the enforcement of this Declaration, these Bylaws, and any Rules and Regulations made pursuant thereto.
- D. Painting, maintenance, repair, replacement and landscaping of the Common Properties. The Board shall also have the exclusive right from time to time to acquire and dispose of by sale or otherwise and without the necessity of approval by any Owner, furnishings and equipment and other personal property for the Common Properties and to provide maintenance, repair and replacement thereof.
- E. Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments that the Board is required to secure or pay for pursuant to the terms of the Declaration, these Bylaws or any Rules or Regulations promulgated hereunder or which, in its opinion, shall be necessary or advisable for the operation of the Property or for the enforcement of the Declaration, these Bylaws, or the Rules and Regulations.

The Board shall have the exclusive right to contract for all goods, services, including security personnel, and insurance, payment for which is to be made a Common Expense.

5.08 Additional Powers of the Board. The Board shall have the right to acquire, operate, lease, manage, mortgage and otherwise trade and deal with the Common Properties as may be necessary or convenient in the operation and management of the Common Properties, and in accomplishing the purposes set forth herein. The Board or any managing agent or entity designated by the Board shall be deemed the agents of the Owners and as such shall manage, maintain and improve the Common Properties and also collect, conserve, allocate and expend money received from the Owners in a manner consistent with such agent's relationship and in conformity with this Declaration, these Bylaws and the Rules and Regulations.

5.09 Meetings of the Board. Meetings of the Board shall be held at such places within or without the State of Tennessee as the Board shall determine. A majority of the then elected members of the Board shall constitute a quorum. The decision of at least a majority of the then elected members of the Board shall be the act of the Board. Meetings of the Board shall be chaired by the President of the Association and the minutes shall be recorded by the Secretary of the Association, whether said Secretary is a member of the Board or not. Any action required to be or which may be taken by the Board may be taken without a meeting of the Board pursuant to a

written consent, setting forth the action so taken, signed by all members of the Board. All officers must be members of the Board.

5.10 Special Meetings. Special meetings of the Board may be called by the President of the Association or by a majority of the Board members.

5.11 Notice of Meetings. Regular meetings of the Board may be held without call or notice. The person or persons calling a special meeting of the Board shall, at least ten (10) days before the meeting, give notice thereof to each of the other Board members by any usual means of communication. Such notice need not specify the purpose for which the meeting is called. If an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

5.12 Waiver of Notice. Any members of the Board may, at any time, waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board at any meeting thereof shall constitute a waiver of notice of such meeting unless a Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called and does so object by delivering a written document to that effect.

5.13 Notice of Election. After the election of the Board to succeed the Developer, the Secretary of the Association shall execute and, where desirable, acknowledge and record a certificate stating the names of all of the members of the then Board, provided, that, in the event of the disability or other incapacity of the Secretary, the President of the Association shall be empowered to execute the aforesaid certificate. The certificate shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

5.14 Fiscal Year. The fiscal year of the Association shall be the calendar year.

5.15 Special Committees. The Board, by resolution duly adopted, may designate one or more special committees, including without limitation an Architectural Review Committee, each committee to consist of two (2) or more Owners appointed by the Board, which, to the extent provided in said resolution and the Declaration, shall have and may exercise the powers set forth in said resolution. Notwithstanding the foregoing sentence, the Developer or its nominee shall always be a member of the Architectural Review Committee until the Developer or its nominee relinquishes this right in writing to the Board. The Board may also rescind any such resolution by a further resolution duly adopted. The Developer shall perform the functions of all Special Committees until establishment of the Association and election of its officers. Such Special Committee or Committees shall have such name or names as may be determined from time to time by the Board and shall keep regular minutes of their proceedings and report the same to the Board when required. The Board may appoint Owners to fill vacancies on Special Committees.

5.16 Rules and Regulations. The Board shall have the power and right to adopt and amend rules and regulations for the purpose of governing the details of the operation and use of the Common Properties and setting forth restrictions on, and requirements respecting the use and


maintenance of the Common Properties. Copies of the Rules and Regulations shall be furnished to each Owner prior to the time the same shall become effective.

5.17 Limitation on Capital Additions, Etc. The Board shall authorize no structural alterations, capital additions to, or capital improvements of the Common Properties, any of which require an expenditure in excess of Five Thousand Dollars (\$5,000.00) without approval of a majority of the eligible votes within the Association. Notwithstanding the foregoing, the Board shall have the power to make any such structural alterations, capital additions to, or capital improvements of, the Common Properties as are necessary, in the Board's reasonable judgment, to preserve or maintain the integrity thereof without obtaining such approval, if in the opinion of the Board an emergency exists which should be corrected before a meeting of the Association could be reasonably called and held.

5.18 Failure to Insist on Strict Performance Not Waiver. The failure of the Board or its agents to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions in the Declaration or these By-Laws, or the Rules and Regulations or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction, right, option or notice; but such term, covenant, condition or restriction, right, option or notice shall remain in full force and effect.

## ARTICLE VI THE ASSOCIATION; MEETINGS, OFFICERS, ETC.

6.01 Quorum. The presence in person or by proxy at any meeting of the Association of the Owners entitled to vote a majority of the eligible votes under the Declaration in response to notice to all Owners properly given in accordance with Sections 6.02 or 6.03 of these Bylaws, as the case may be, shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Association upon the affirmative vote of persons entitled to cast a majority of the votes of the Association.

 6.02 Annual Meeting. There shall be an annual meeting of the Association on the first Monday of February at any time after 5:00 P.M. Eastern Time at such reasonable place or other time (but not more than sixty (60) days before or after such date) as may be designated by written notice by the Board delivered to the Owners not less than fifteen (15) days prior to the date fixed for said meeting. At or prior to the annual meeting, the Board shall furnish to the Owners: (1) a budget for the coming fiscal year that shall itemize the estimated Common Expenses of the coming fiscal year with the estimated allocation thereof to each Owner and (2) a statement of the Common Expenses itemizing receipts and disbursements for the previous and, if then available, for the current fiscal year, together with the allocation thereof to each Owner.

6.03 Special Meeting. Special meetings of the Association may be held at any time and at any reasonable place to consider matters which, by the terms hereof, require the approval of all or some of the Owners, or for any other reasonable purpose. Special meetings shall

be called by a majority of the Board, or by the Owners of at least thirty-three percent (33%) of the eligible votes of the Association by written notice, delivered to all Owners not less than thirty (30) days prior to the date fixed for said meeting. The notice shall specify the date, time and place of the meeting and the matters to be considered.

6.04 Parliamentary Rules. Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with these Bylaws or other such rules adopted by the Board.

6.05 Officers. The officers of the Association shall be a President, Vice-President, Secretary and Treasurer, all of whom shall be members of the Board. Once a Board has been elected by the Association Members to succeed the Developer pursuant to Section 5.03 hereof, the following provisions shall become applicable: Each officer shall be required to be an Owner. No officer shall receive compensation for serving as such. In the event an office becomes vacant due to an officer ceasing to be an Owner, or due to the death or disability of an officer, or for any other reason, the Board shall immediately name a successor to that office to serve out the remainder of the term. The Board may, in its discretion, require that officers be subject to fidelity bond coverage.

A. President. The President shall preside at all meetings of the Association and of the Board and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees.

B. Vice-President. In the absence or inability of the President, the Vice-President shall perform the functions of the President.

C. Secretary. The Secretary shall keep the minutes of all proceedings of the Board and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Association and the Board, including the minute book wherein the resolutions shall be recorded.

D. Treasurer. The Treasurer shall be responsible for the fiscal affairs of the Board and the Association, but may delegate the daily handling of funds to accountants selected by the Board.

## ARTICLE VII ASSESSMENTS

7.01 Amount of Annual Assessment. At least thirty (30) days prior to the annual meeting of the Association, the Board (or the Developer if the transfer of governing authority from the Developer to the Board has not yet taken place as described in the Declaration) will adopt a proposed budget for the upcoming year. The budget will establish the total amount of annual assessments on all Lots in the Development. The amount of the annual assessment for the individual Lots will be determined on the same basis as voting rights under Section 4.02 herein.

The budget shall be approved or rejected at the annual meeting of the Association by vote determined pursuant to Section 6.01 of the By-laws.

7.02 Additional Property. Whenever additional land is added to the Development pursuant to the Declaration, such additional property will, automatically without the necessity of a vote of the owners as required for other types of amendments, reduce the assessment imposed upon the then existing Lots. Each additional Lot added to the Development will be subject to assessments hereunder on the same basis as the original Lots submitted to the terms of the Declaration.

7.03 Special Assessments. In addition to the annual assessments authorized by Section 7.01 hereof, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Properties, the cost of any addition to the Common Properties or any unexpected expense provided that such special assessments shall have the written approval of at least a majority of the eligible votes in the Association. Such approval may be given in writing or at a duly called special meeting, written notice of which shall be sent to all Owners at least thirty (30) days in advance setting forth the purpose of the meeting.

7.04 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence on the date (which shall be the first day of the month) fixed by the Association. The amount of the first annual assessment on a Lot shall be based pro-rata on the balance of the calendar year and shall become due and payable on the closing of the Lot. The assessment for any year, after the first year, whether such assessment be a general or special assessment, shall be due and payable within ten (10) days following approval of such assessment by the Association as provided herein. The Board shall be authorized to charge a late fee to any Lot owner who fails to pay any assessment, annual or special, on or before the due date thereof.

## **ARTICLE VIII** **LIABILITY AND INDEMNIFICATION**

8.01 Liability of Members of the Board and Officers. The members of the Board, the officers and any agents and employees of the Association shall: (i) not be liable to the Owners or Association as a result of their activities as such for any mistake of judgment, or otherwise, except for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (ii) have no personal liability to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Owners in their capacity as such; (iii) have no personal liability in tort to an Owner or any other person or entity direct or imputed by virtue of acts performed by them as Board members and/or officers except for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; and (iv) have no personal liability arising out of the use, misuse or condition of the Common Properties, or which might in any other way be assessed against or imputed to them as a result or by virtue of their capacity as such Board members and/or officers.

8.02 Indemnification by Association. To the extent now or hereafter permitted by applicable law, the Association shall indemnify and hold harmless any person, his heirs and personal representatives, from and against any and all personal liability, and all expenses, including without limitation counsel fees and court costs, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more Owners or any other persons or entities, to which he or she shall be or shall be threatened to be made a party by reason of the fact that he or she is or was a member of the Board or an officer or agent or employee of the Association; provided, in the case of any settlement, that the Board shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or by vote of the Association of the Board, or otherwise. The indemnification by the Association set forth in this Article VIII shall be paid by the Board on behalf of the Association and shall constitute a Common Expense.

8.03 Actions Brought by One or More Owners on Behalf of All Owners. No suit shall be brought by one or more but less than all Owners on behalf of the Association without approval by a majority of the votes of the Association.

8.04 Notice of Suit and Opportunity to Defend. Suits brought against the Association, or the Board, or the officers, employees or agents thereof, in their respective capacities as such, or the Property as a whole, shall be directed to the President of the Association, who shall promptly give written notice thereof to the other members of the Board and shall be defended by the Board. The Association and all Owners shall have no right to participate other than through the Board in such defense. Suits against one or more, but less than all, Owners shall be directed to such Owners, who shall promptly give written notice thereof to the Board and shall be defended by such Owners at their expense.

## **ARTICLE IX** **GENERAL PROVISIONS**

9.01 Businesses. Nothing contained in these Bylaws shall be construed to give the Board the authority to conduct any business for profit on behalf of the Association or any Member.

9.02 Amendment. These Bylaws may be amended, modified, or revoked in any respect from time to time by Developer prior to the election of the first Board and thereafter by the affirmative vote of the Owners of not less than seventy-five percent (75%) of the eligible votes within the Association, provided, however, that the contents of these Bylaws shall always contain those particulars which are required to be contained herein by the laws of the State of Tennessee. Any amendment shall not be required to be recorded with the Register's Office of Hamilton County but must be kept on file with Developer and the Secretary and available to all Owners upon written request.

9.03 Notices. Any notice required to be sent to any Owner under the provisions of these Bylaws shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the Owner on the records of the Association at the time of such mailing. Notice to one of two or more co-owners of a Lot shall constitute notice to all co-owners. It shall be the obligation of every Owner to immediately notify the Secretary in writing of any change of address. Any notice required to be sent to the Board, the Association or any officer thereof, under the provisions of these Bylaws shall likewise be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to such entity or person at the following address:

The Brownstones at Bragg Point Homeowners Association, Inc.  
P.O. Box 813  
Ooltewah, Tennessee 37363

9.04 Conflict. In the event of any conflict between these Bylaws and the provisions of the Charter of the Association, the Charter shall control and govern. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control and govern.

9.05 Nonwaiver of Covenants. No covenants, restrictions, conditions, obligations or provision contained in the Declaration or these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

9.06 Agreements Binding. All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Declaration and Bylaws shall be deemed to be binding on all Owners, their respective heirs, successors and assigns.

9.07 Severability. The invalidity of any covenant, restriction, condition, limitation or any other provisions of these Bylaws, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of these Bylaws.

9.08 Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Charter and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable costs.



Instrument: 2013022100196  
Book and Page: GI 9878 468  
MISC RECORDING FEE \$25.00  
DATA PROCESSING FEE \$2.00  
Total Fees: \$27.00  
User: DLS  
Date: 2/21/2013  
Time: 4:04:48 PM  
Contact: Pam Hurst, Register  
Hamilton County, Tennessee

*File*  
This Instrument Prepared By and Return To:  
Clifton R. Henry, Esq.  
Miller & Martin PLLC  
Suite 1000, Volunteer Building  
832 Georgia Avenue  
Chattanooga, Tennessee 37402-2289

**FIRST AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE  
BROWNSTONES AT BRAGG POINT**

(Cross Reference: Book 9546, Page 498)

*165488*  
THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE BROWNSTONES AT BRAGG POINT (the "Amendment") executed to be effective as of the 20th day of February, 2013, by BRAGG POINT PROPERTIES, LLC, a Tennessee limited liability company ("Developer"), and GREG A. VITAL, CARLENE C. VITAL, and J. FRANKLIN FARROW (collectively, ("Lot Owners")).

**Background:**

A. Developer has developed a portion of and is continuing to develop a certain residential neighborhood commonly known as The Brownstones at Bragg Point and located in the City of Chattanooga, Hamilton County, Tennessee (the "Development"), and each of the Lot Owners own a Lot in said Development.

B. The Development is subject to a Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") recorded at Book 9546, Page 498, Register's Office of Hamilton County, Tennessee.

C. In order to clarify certain terms and conditions of the Declaration, Developer and Lot Owners desire to amend the Declaration.

D. Pursuant to Section 15(a) of the Declaration, the Declaration may be amended by the consent of the members of the Association holding at least 67% of the total eligible vote of the Association. The Developer and Lot Owners represent 100% of the members of the Association.

**Amendment:**

NOW THEREFORE, for and in consideration of the mutual benefits provided herein by this Amendment, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree that the above recitals are true and correct and are herein incorporated, and further agree that the Declaration is amended as follows:

1. Capitalized Terms. Capitalized terms, the definitions of which are not herein provided, shall have the meanings ascribed to them in the Declaration.

2. Conveyance of the Open Space Community Lot. Subparagraph (b) under Section 2 of the Declaration is hereby amended by inserting the following after the last sentence of said subparagraph:

“At such time as the Developer no longer owns any Lot, the Developer shall convey fee simple title to the Open Space Community Lot to the Association. Notwithstanding the foregoing, the Developer reserves the right to convey the Open Space Community Lot to the Association at any time prior to the conveyance of its last Lot in its sole discretion.”

3. Provision for Pest and Termite Control Services. With respect to creating a right in the Association to provide for pest and termite control services to the Lots and Townhomes, the Declaration is hereby amended as follows:

(a) Subparagraph (d) under Section 4 of the Declaration is hereby amended by inserting therein the following new subparagraph (xii):

“(xii) Enter into bulk contracts for the provision of pest and termite control services to the Lots and Townhomes, the cost of which shall be a Common Expense hereunder. If any particular pest control services or benefits are provided to particular Owners at their request, the benefited Owner(s) shall pay the service provider directly for such services or the Association may assess the costs as a special assessment against such benefited Owner(s), as appropriate.”

(b) Subparagraph (o) under Section 8 of the Declaration is hereby deleted in its entirety.

(c) Subparagraph (b) under Section 14 of the Declaration is hereby deleted in its entirety and replaced with the following:

“(b) *Landscaping and Pest Control Easements.* The following easements are created by this Declaration for the benefit of the Association, its agents and employees: (1) perpetual, non-exclusive easement of access to, upon, through, under, above and across: (i) the front yards (northwestern side of each Townhome) of each Lot, (ii) the yard between the northeastern exterior wall of the Townhome located on Lot 8 and said Lot’s northeastern boundary line, and (iii) the yard between southwestern wall of Lot 14 and said Lot’s southwestern boundary line, for the purpose of installing, maintaining, and replacing any and all landscaping located thereon; and (2) perpetual, non-exclusive easement of access to, in, upon, through, under, above and across Townhomes and Lots, for the sole purpose of providing pest and termite control services.”

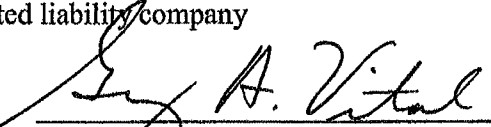
4. Restriction on Occupancy. Subparagraph (a) under Section 9 of the Declaration is hereby deleted in its entirety and replaced with the following:

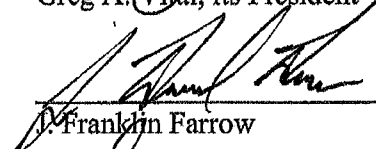
“(a) *Restriction on Number of Occupants.* Occupancy of each Lot shall be limited to the greater of (i) two (2) persons per bedroom in the Townhome plus one (1) additional person, and (ii) the maximum number of occupants allowed under applicable law.”


5. No Further Amendment. Except as expressly hereby amended, the Declaration remains in full force without further amendment thereto.


IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the date first above written.

BRAGG POINT PROPERTIES, LLC, a Tennessee limited liability company

By:   
Greg A. Vital, its President

By:   
J. Franklin Farrow

By:   
Greg A. Vital

By:   
Carlene C. Vital