

**This Instrument Prepared By:**  
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Murfreesboro, Tennessee 37130

Heather Dawbarn, Register  
Rutherford County Tennessee  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
CEDAR CREEK TOWNHOMES  
A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS**

THIS DECLARATION, made and entered into by ALCORN PROPERTIES, LLC (hereinafter called "Declarant"), its successors and assigns.

**WITNESSETH:**

WHEREAS, Declarant is the legal title holder of certain real estate located in the County of Rutherford and State of Tennessee, which real estate is more fully described in Exhibit "A" attached hereto, being all of the property conveyed to ALCORN PROPERTIES, LLC, by deed of record in Record Book 1778, page 3698 of the Register's Office of Rutherford County, Tennessee.

WHEREAS, Declarant intends to and does hereby submit the above described parcel of real estate, together with all buildings, structures, improvements, and other permanent fixtures of whatsoever kind thereon and all rights and privileges belonging or in any way pertaining thereto to the provisions of the Horizontal Property Act of the State of Tennessee as the same may be amended from time to time; and

WHEREAS, Declarant further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the property or any part thereof, and intends that all future owners, occupants, mortgagees, and any other persons hereinafter acquiring any interest in the Property shall hold said interest subject to certain rights, easements, and privileges in, over, and upon said premises and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct, and maintenance thereof, hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspects of offices on the Property and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property.

NOW, THEREFORE, Declarant, as the legal title holder of the real estate hereinbefore described in Exhibit "A," and for the purposes above set forth, makes the following declarations and submissions as part of this Declaration:

**ARTICLE I  
DEFINITIONS**

As used herein, unless the context otherwise requires:

Act means the Horizontal Property Act of the State of Tennessee, Tennessee Code Annotated Section 66-27-101, et. Seq., as the same may be amended from time to time.

Association means "Cedar Creek Townhomes Homeowners' Association, Inc.", a Tennessee nonprofit corporation.

Board means the Board of Directors of the Association.

Buildings shall mean those structures located on the Property and containing the Units.

By-Laws means the By-Laws of the Association attached hereto as Exhibit "C" and made a part hereof, as amended from time to time. For purposes of the Act, all provisions contained in the body of this Declaration dealing with the administration and maintenance of the Property shall be deemed to be part of the By-Laws.

Common Elements means all real property and improvements, owned by the Association for the common use and enjoyment of the Owners including but not limited to entrance signage, landscaping, and retention ponds. Common Elements shall remain undivided and shall not be the subject of an action for partition.

Limited Common Elements means all Common Elements contiguous to and serving exclusively a single Unit or one or more adjoining Units as an inseparable appurtenance thereto, the enjoyment, benefit, or use of which is reserved to the lawful Occupants of such Units either in this Declaration, on the plat or by the Board. Said Limited Common Elements shall include, but shall not be limited to, the following:

- (1) All that portion of the Property needed for ingress and egress to any Unit.
- (2) All other Common Elements and facilities as may be located within the bounds of such Property which serve only one Unit.

Majority or Majority of the Unit Owners means the Owners of more than fifty percent (50%) of the voting rights of the Unit Owners.

Declaration means this instrument, by which the Property is submitted to the provisions of the Act, as hereinafter provided, as amended from time to time, including all Exhibits hereto.

Mortgage means a valid recorded first deed of trust securing an indebtedness owed to an individual, lending institution, or any other entity.

Mortgagee means the beneficiary of any deed of trust who has a valid and enforceable security interest in the Property.

Occupant means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

Parcel or Plat means the plat of survey submitted to the provisions of the Act showing the number and/or letter of each Unit, expressing its area, location, and other data necessary for identification. Said plat of the project is of record in Plat Cabinet 48, page 24 of the Register's

Office of Rutherford County, Tennessee and is attached hereto as Exhibit "B" recorded herewith and as amended from time to time.

Private Elements means and includes the land upon which a Unit is located as shown on the Plat for which fee simple ownership and exclusive use is reserved to that Unit only. All Limited Common Elements shall also be deemed to be Private Elements.

Project means the entire Property including all structures thereon.

Property means all the land, property, and space comprising the Parcel, and all improvements and structures erected, constructed, or contained therein or thereon, including the Buildings and all easements, rights, and appurtenances belonging thereto, and any furniture, furnishings, fixtures, and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.

Record or Recording refers to the record or recording in the office of the Register of Deeds in Rutherford County, Tennessee.

Unit shall mean a portion of the Property as shown and designated in the Plat for separate ownership, and shall include the Private Elements and the residence and improvements now and hereafter located thereon. The Units are identified by a number or alphabetic letter (or combination thereof) on the Plat, and may be held and conveyed by reference to such number or letter. Conveyance of a Unit shall automatically convey the undivided membership of each Unit Owner in the Association. Any Unit may be jointly or commonly owned in any state recognized under applicable law.

Unit Owners means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit and of the undivided interest in the Common Elements appurtenant thereto.

## **ARTICLE II SUBMISSION OF PROPERTY TO THE ACT**

Declarant, as the legal title holder in fee simple of the Parcel, expressly intends to, and by recording this Declaration does hereby, submit, and subject the Parcel also known as the Property (Exhibit "A") to the provisions of the Act and hereby establishes a Horizontal Property Regime to be known as Cedar Creek Townhomes. Provided, however, and in addition to Development Rights and Special Declarant Rights reserved to Declarant as hereinafter stated, easements are hereby reserved in the Property by Declarant for the benefit of future development for the following purposes and uses: (i) an easement is reserved in the Property exclusive of the buildings, to use the land area of the property in conjunction with future development to satisfy existing or future zoning law requirements, relating to the ratio of land or lot area to office units, when the additional phase or phases are developed, should Declarant choose to develop such land whether or not Declarant chooses to annex same into the Horizontal Property Regime herein established; (ii) easements are hereby reserved in the Property for the benefit of the owners of units in other projects, annexed phases or separate developments which may be established by Declarant on adjoining property of

Declarant, which easements shall be for use by the occupants of units in the buildings for driveways and public utility service facilities located on the Property; (iii) an easement is reserved for Declarant to use the land of the Property to relocate, expand, modify, reduce, or extend driveways, relocate sewers, utility lines, or service connections in order to serve the existing buildings of said Property and in order to properly maintain and repair the buildings located therein; (iv) and Declarant shall have the unrestricted right, at its sole expense, to relocate, expand, modify, reduce, or extend existing driveways, parking areas and yard, and to construct, expand, enlarge, or relocate sewers, utility lines, or service connections, in order to serve existing buildings with their co-owners or tenants, along with other buildings which may be constructed on adjoining tracts, and their co-owners or tenants. The unrestricted rights reserved by Declarants in this paragraph shall be assignable by it and shall be easements running with the land described in Exhibit "A." The exercise of any of the rights reserved by Declarant shall be subject to an obligation of the Declarant to repair and/or replace any damage to the common areas or Units incurred during the exercise of such rights, and that such repair and/or replacement shall be to a condition similar to the prior condition, normal wear and tear excepted.

Nothing herein contained shall be construed as a restriction on Declarant's use and development of the areas outside the boundary of the Property described in Exhibit "A" attached hereto, it being expressly stated that Declarant may use and develop, sell, and/or lease said areas for purposes totally outside and unrelated to this Project.

### **ARTICLE III PLAT**

The plat or survey of the Property is attached hereto as Exhibit B, incorporated herein by reference, and sets forth the numbers, areas, locations, and other data, as required by the Act. The Exhibit B may be amended or modified solely by Declarant by additional surveys and plats showing subdivision of Units and/or annexation of additional phases or otherwise, subject to the limitations and requirements imposed by the Act.

### **ARTICLE IV UNITS; RESTRICTION ON USE**

1. The legal description of each Unit shall consist of the identifying letter and/or number of such Unit as shown by corresponding unit letter and/or number on the plat as heretofore referenced. Every deed, lease, mortgage, deed of trust, or other instrument shall legally describe a Unit by its corresponding unit identifying letter and/or number as shown on the plat and every such description shall be deemed good and sufficient for all purposes, as provided in the Act. Except as allowed by the Act, no Unit Owner shall, by deed, plat, court decree, or otherwise, subdivide or in any other manner cause a Unit to be separated into any units different from the whole Unit as shown on the plat. The aforementioned prohibition on subdividing shall not be applicable to Declarant as to any Unit Declarant may own; however, in exercising such right, Declarant shall be subject to the limitations and requirements imposed by the Act.

2. A unit shall be used only in keeping with the zoning use restrictions that may be placed on the Property by the Town of Smyrna and/or Rutherford County.

Notwithstanding the Development Rights and Special Declarant Rights reserved, this Article IV shall not be subject to amendment unless by unanimous approval of all Unit Owners.

## **ARTICLE V OWNERS' ASSOCIATION**

There has been or will be formed an Association having the name "Cedar Creek Townhomes Homeowners' Association, Inc.," a Tennessee nonprofit corporation, which Association shall be the governing body for all the Unit Owners, subject only to certain Development Rights and Special Declarant Rights herein reserved. The Association shall oversee the maintenance, repair, replacement, administration and operation of the Property, as provided in the Act, this Declaration and the Bylaws. The Bylaws for the Association shall be the Bylaws attached to this Declaration as Exhibit C and made a part hereof. The Board shall be elected and shall serve in accordance with the provisions of the Bylaws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time, as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of the Unit Owners in accordance with the provision of the Act, this Declaration and the Bylaws. Each Unit Owner shall be a member of the Association so long as he is a Unit Owner. A Unit Owner's membership shall automatically terminate when he ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association.

## **ARTICLE VI PROPORTIONATE SHARE**

1. The title and interest of each owner of a Unit in the common areas and facilities and their proportionate share in the common expenses, as well as the proportionate representation for voting purposes in the Association, shall be as set forth in the "By-laws of Cedar Creek Townhomes Homeowners' Association, Inc." which are Exhibit "C" to this Declaration.

2. The proportionate representation for voting purposes and proportionate share in the common profits and expenses may be limited or changed in accordance with the amendment provisions of the By-Laws attached hereto as Exhibit "C."

3. Declarant shall retain and vote the share for each Unit until such Unit is sold.

## **ARTICLE VII DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS RESERVED**

### 1. Development Rights Reserved to Declarant

Declarant shall have the following Development Rights:

(a) The right to add real estate to the Project by annexation and amendment to the Declaration and Plat without the consent of Unit Owners within ten (10) years of the date of recording of this instrument in the Register's Office for Rutherford County, Tennessee.

(b) The right to create Units, Common Elements and Limited Common Elements within the Project provided that in exercising such right, Declarant shall comply with the applicable provisions of the Act.

(c) The right to allocate Limited Common Elements and expenses thereof to specific Units other than those Limited Common Elements specifically identified in Article I hereof under the definition of Unit.

(d) The right to amend this Declaration provided that such right is exercised for the specific purpose of equitably re-allocating the percentage of common expenses resulting from the addition or removal of Units.

The exercise of any of the aforesaid Development Rights shall be in compliance with all applicable provisions of the Act.

## 2. Special Declarant Rights Reserved

Declarant shall have the following Special Declarant Rights:

(a) The right to complete improvements indicated on plats and plans filed with the Declaration and in accordance with the Act.

(b) The right to exercise any of the Development Rights as hereinabove stated.

(c) The right to maintain sales offices, management offices, signs advertising the Project, and sales models pursuant to the Act.

(d) The right to use easements through the common elements for the purpose of making improvements within the Project or within real estate which may be added to the Project pursuant to the Act.

(e) The right to make the Project part of a larger project or a planned community pursuant to the Act.

(f) The right to make the Project subject to a master association pursuant to the Act.

(g) The right to appoint or remove any officer of the Association or any master association or any member of the Board of Directors during any period of Declarant Control as hereinafter stated.

The exercise of any of the aforesaid Special Declarant Rights shall be in compliance with all applicable provisions of the Act.

**ARTICLE VIII  
EASEMENTS**

1. Easements for Utilities, Etc.

(a) There are hereby reserved unto Declarant so long as the Declarant owns a Unit and thereafter unto the Association, and the successors and assigns of each, access and maintenance Easements upon, across, through, over, and under all of the Property and each of the Units to the extent reasonably necessary for the purpose of installing, replacing, repairing, and maintaining devices that provide utility services, including all sewer, water, power and telephone, pipes, lines, mains, conduits, poles, transformers, heating or air conditioning systems, ventilation systems, cable television systems, master television antenna systems, satellite television systems, security and similar systems, computer systems, roads, walkways, irrigation systems, drainage systems, lights, light fixtures, appliances, signage, and any and all other appurtenances, equipment or machinery necessary or incidental to the proper functioning of the same which serve the Property, any Unit thereon, or any adjacent property of Declarant, and the improvements thereto, including the right of ingress and egress. No utility service proposed to be installed by a Unit Owner shall be installed unless the Unit Owner shall first have obtained the written approval for such utility service from the Declarant, so long as the Declarant owns a Unit, and thereafter from the Association and the successors and assigns of each. Any such utility service shall be designed to minimize interference with Common Elements and with other Units. Should any governmental agency or utility company finishing one of the foregoing services hereafter request a specific Easement by a separate recordable instrument in connection with the furnishing of any such service, the Declarant, so long as the Declarant owns a Unit and thereafter the Association and the successors and assigns of each, shall have the right to grant such Easement without payment of any consideration and without the prior consent of any Unit Owners. Any damage to a Unit resulting from the use of such Easement by a Unit Owner, or by its agents or contractors, shall promptly be repaired by, and at the expense of, the Unit Owner so using the Easement. The use of this Easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry into any Unit shall be made only after reasonable notice to the Unit Owner or occupant.

(b) In addition to the above provisions, upon the recording of this Declaration, Declarant specifically grants to the local water supplier, electric company, telephone company, cable television company, and natural gas supplier Easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes.

(c) Every Unit Owner shall also have a perpetual non-exclusive Easement to use and maintain all pipes, wires, ducts, cables, conduits and public utility lines which serve the Unit Owner and are located within the boundaries of another Unit.

## 2. Party Walls.

(a) Each wall which is built as a part of the original construction of Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or acts or omissions shall apply thereto. There shall be no changes in, impairments of or permanent structural attachments made to any party wall unless expressly made in conformity with this Article and consented to by all persons having an interest in the party wall. There shall be an Easement for reasonable repairs over the areas immediately adjacent to each side of all party walls for the benefit of all persons having an interest therein; provided, however, that such Easement shall allow entry only at reasonable times and shall in no event be deemed to permit entry into the interior portions of any Unit except to the extent necessary to effect the required repairs. Any damage resulting from use of the Easement shall be repaired at the expense of the Unit Owner permitting or causing the same to occur.

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the Unit Owners who make use of the wall in proportion to such use without prejudice, however, to the right of any such Unit Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(c) If a party wall is destroyed or damaged by fire or other casualty, any Unit Owner who has used the wall may restore it, and if the other Unit Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Unit Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) The right of any Unit Owner to contribution from any other Unit Owner under this Article shall be appurtenant to the land and shall pass to such Unit Owner's successors in title.

(e) With respect to a perimeter wall of a Unit that is shared with the owner of adjacent property, Declarant and/or Association, and not the Unit Owner, shall be jointly responsible along with the owner of the adjacent property for repair and maintenance of such party wall in accordance with the general rules of law applicable to party walls.

(f) Any Unit Owner having a party wall with an adjacent property owner accepts title to such Unit subject to the party wall rights and obligations set forth in this Subsection 2 and accepts the right of Declarant and/or Association to perform repairs, maintenance and reconstruction to the party wall. Provided, however, in the event of damage or destruction to the party wall caused by the Unit Owner, another occupant of the Unit, or by any agent or contractor of the Unit Owner, then the Unit Owner shall, at his expense, pay for and perform such repairs, maintenance and reconstruction to restore the party wall to its previous condition.

(g) The Easements and rights created by this Subsection 2 are and shall be perpetual and construed as a covenant running with the land and each and every successor in title



of such a Unit shall hereafter be deemed to have accepted title with the understanding that he shall also be bound by the provisions hereof.

3. Maintenance Responsibility and Easements for Maintenance. Perpetual non-exclusive Easements for ingress and egress over, under, across, in and upon the Property (but not so as to interfere with improvements on the Property located in accordance with an approved parcel site plan) are hereby declared created and reserved by Declarant for the benefit and use of itself and/or the Association, as the case may be, their respective successors and assigns, agents and employees, to provide reasonable access to Common Areas and Common Elements and to enter upon the Properties for the purposes of performing the maintenance and related activities. The Association shall be responsible for the perpetual upkeep and maintenance of all Common Areas and Common Elements.

4. Easements of Encroachment. There shall be reciprocal appurtenant Easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvement constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an Easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, a Unit Owner, occupant, or the Association.

5. Effect of Easements. All Easements provided for in this Article shall run with the land and bind all Unit Owners, their successors, assigns and successors in title, and the rights, reservations and privileges for the use and benefit of Declarant shall continue until they expire by their terms.

#### **ARTICLE IX DECLARANT CONTROL PERIOD**

The right of the Declarant in Article VII 2(g) of this Declaration to appoint or remove any officer of the Association or any master association or any member of the Board of Directors (the "Declarant Control Period") shall continue in favor of the Declarant as long as Declarant owns at least One (1) of the Units; provided, however, such Declarant Control Period may terminate sooner under the provisions of T.C.A. §66-27-403 (c)(1) and (d) of the Act, incorporated herein by reference.

#### **ARTICLE X PARTITION OR DIVISION PROHIBITED**

The common and/or limited common areas and facilities shall remain undivided and no Unit Owner shall bring any action for partition or division.

The undivided interest in the common areas and facilities shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

**ARTICLE XI  
COMPLIANCE**

Each Unit Owner shall comply with the provisions of this Declaration, the By-Laws, decisions, and resolutions of the Association or its representatives as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due for damages, or for injunctive relief.

**ARTICLE XII  
WAIVER OF USE PROHIBITED**

No Unit Owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of his Unit.

**ARTICLE XIII  
PERSONS AND CONVEYANCES SUBJECT HERETO**

All present or future Unit Owners, tenants, future tenants, or any other person that might use the facilities of the project in any manner, are subject to the provisions of this Declaration and that the mere acquisition or rental of any of the Units of the project or the mere act of occupancy of any of said Units shall signify that the provisions of this Declaration are accepted and ratified.

Any sale or lease of any Unit shall be subject to the terms and conditions of the Declaration and By-Laws.

**ARTICLE XIV  
INSURANCE; DESTRUCTION AND REPAIR**

The Board shall have the authority to obtain insurance for the Property, (not to include the Limited Common Elements, Private Elements, additions within, improvements to and decorating of the Units) against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Property, and against such other hazards and for such amounts as the Board may deem advisable. Insurable replacement cost shall be deemed to be the cost of restoring the Common Elements. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Board, as the trustee for each of the Unit Owners in direct proportion to said Unit Owner's respective percentage of ownership in the Common Elements, as set forth in this Declaration, and for the holders of mortgages on his Unit as loss payee, if any. The policy of insurance shall also contain, if possible, a waiver of subrogation rights by the insurer against individual Unit Owners. The premiums for such insurance shall be a common expense. However, at the option of the Board, and upon written notice to all Unit Owners, premiums for such insurance

shall be separately billed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Elements.

In the event of damage to or destruction of all or any part of the Common Elements as a result of fire or other casualty covered by insurance maintained by the Board pursuant hereto (unless more than two-thirds of such Buildings and Common Elements require reconstruction), the Board shall, in its sole and absolute discretion, determine, and without intervention of any Unit Owner, arrange for the prompt repair and restoration of the damaged portions of Common Elements substantially in accordance with the original plans and specifications therefore. Where the insurance proceeds are insufficient to cover the cost of such repairs and restoration, the deficit shall be paid by all Unit Owners directly affected by the damage, in proportion to each such Unit Owner's percentage of ownership in the Common Elements.

The Board shall not be responsible for the repair, replacement or restoration of any Limited Common Elements, Private Elements, furniture, furnishings, fixtures or equipment installed in the Unit by a Unit Owner or Occupant or any other personal property located on the Property owned by a Unit Owner or Occupant unless insurance thereof is specifically provided for in the insurance policy obtained by the Board. The Board in its sole discretion shall determine which Unit Owners are directly affected by the damage.

Reconstruction shall not be compulsory where the whole or more than two-thirds (2/3) of all Common Elements are destroyed or damaged by fire or other casualty, as determined by the Board. In such case, and unless otherwise unanimously agreed upon by the Unit Owners, the insurance proceeds shall be delivered to the Unit Owners or their mortgagees, as their interests may appear, in proportion to the percentage of each Unit Owner in the Common Elements; and the Board, as soon as is reasonably practicable and as agent for the Unit Owners, shall sell the Property, in its then condition, free from the effect of this Declaration, which shall terminate upon sale, on the terms satisfactory to the Board, and the net proceeds of such sale and of all insurance policies shall thereupon be distributed to the Unit Owners or their mortgagees, as their interest may appear, in proportion to the percentage interest of each Unit Owner in the Common Elements. If the Board fails to consummate a sale pursuant to this paragraph within twenty-four (24) months after the destruction or damage occurs, then the Board shall, or if it does not, any Unit Owner or mortgagee may, record a sworn declaration setting forth such decision and reciting that under the provisions of this Declaration has terminated and that judicial partition of the Property may be obtained pursuant to the laws of the State of Tennessee. Upon final judgment of a court of competent jurisdiction decreeing such partition, this Declaration shall terminate.

The Board also shall obtain comprehensive public liability insurance, in such amounts as it deems desirable and worker's compensation insurance and other liability insurance as it deems desirable, insuring each Unit Owner, the mortgagee(s) of Record, if any, the Association, its officers, directors, Board and employees, Declarant and any Managing Agent, from (i) liability in connection with the Common Elements, and (ii) liability arising out of legal proceedings relating to employee contracts to which the Association is a party (to the extent such insurance is reasonably available). The premiums for such insurance shall be a common expense; however, at the option of the Board, and upon written notice to all Unit Owners, premiums for such insurance shall be separately billed to each Unit Owner in proportionate amounts corresponding to such Unit

Owner's percentage of ownership in the Common Elements. The Board shall retain in safekeeping any such public liability policy for six (6) years after the expiration date of the policy.

The Board in its sole discretion, also shall have authority to and may obtain such other insurance and bonds as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Property and each member of the Board and officer of the Association, and each member of any committee appointed pursuant to the Bylaws of the Association, from liability arising from the fact that said person is or was director or officer of the Association, or member of any such committee. The premiums for such insurance and bonds shall be a common expense.

Each Unit Owner shall be responsible for obtaining his own insurance for his Unit, Limited Common Elements and Private Elements, exclusively serving his Unit, contents of his own Unit as well as his additions and improvements thereto, all decorations, furnishings and personal property therein, and any personal property stored elsewhere on the Property. The insurance policy shall afford, as a minimum protection against loss or damage by fire or other perils normally covered by the "Cause of Loss – Special Form Basis" endorsement, where such is available, and such policy shall be in an amount equal to 100% of current replacement cost of such individual Unit Building and all such alterations, additions, improvements or betterments thereto and any Limited Common Elements serving his Unit. Each Unit owner shall provide the Board a current insurance policy meeting the requirements set forth herein at least annually or as requested by the Board from time to time. Each Unit Owner shall also obtain his own comprehensive public liability insurance policy insuring each Owner, mortgagee or record, is any, the Association, its officers, directors, Board and employees from liability in connection with such Unit Owner's individual Unit or any Limited Common Element serving his Unit. In addition, in the event a Unit Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that his liability loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Board for the benefit of all the Unit Owners as part of the common expense, as above provided, said Unit Owner may at his option and expense, obtain additional insurance.

## **ARTICLE XV ARCHITECTURAL STANDARDS**

Without the prior written approval of the Board or the ARC (as defined below), no person shall construct any Residential Unit or other improvements upon a Unit, or after completion of such Residential Unit or other improvements, make any modifications, additions or alterations to such Residential Unit or any structure thereon or improvement thereto. In the event the Board or the ARC (if applicable) fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

The Board may designate an architectural review committee (the "ARC") to exercise its authority under this Article and shall promulgate detailed standards and procedures in implementing the requirements of this Article. The ARC shall initially be composed of DAVID ALCORN. The Board and any committee it may designate may not discriminate between Owners,

and upon a written request for a hearing submitted to the Board, an aggrieved Owner shall have the right to a hearing before the Board in accordance with the applicable procedures established by the Board from time to time. The Board shall have the standing and authority to enforce in courts of competent jurisdiction its decisions in connection with this Article. This Article shall be effective and may not be amended without the prior written consent of Declarant, so long as Declarant owns any land subject to this Declaration or subject to annexation by this Declaration.

## **ARTICLE XVI OBLIGATION OF THE UNIT OWNERS**

### **Section 1. Determination of Common Expenses and Fixing of Common Charges:**

(a) Annual Assessments. The Board of Directors shall from time to time, and at least annually, prepare a budget for the project, determine the amount of the common charges payable by the Unit Owners to meet the expenses of administration and of maintenance and repair of the common elements, and, in the proper case, of the limited common elements of the property, and any other expenses lawfully agreed upon; and the Board of Directors shall allocate and assess such common charges among the Unit Owners equally. The common expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Directors, or, at the option of the Board, the insurance may be billed individually, apart from the monthly common expenses. The common expenses may also include such amounts as the Board of Directors may deem proper for the operation and maintenance of the property, including, without limitation, an amount for working capital of the project, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the common expenses for any prior year. The Board of Directors shall advise all Unit Owners, promptly in writing, of the amount of common charges payable by each of them and shall furnish copies of each budget on which such common charges are based, to all Unit Owners and their mortgagees, if requested.

(b) Special Assessments. In addition to the annual assessment authorized above, the Association may levy in any calendar year, a Special Assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Written notice for any meeting called for the purpose of authorizing a Special Assessment shall be sent to all members not less than thirty (30) nor more than sixty (60) days in advance of the meeting and shall state the purpose of such meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of such class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If the Association has not been organized and the Declarant is acting in lieu of such Association, the above notice requirement is waived.

(c) Transfer/Set-up and Capital Improvement Fees. In addition to the above charges and assessments, each purchaser of a Unit shall be subject to the payment of a Transfer/Set-up Fee and a Capital Improvement Fee as set by the Board from time to time, due and payable at the closing of such Unit. Each prospective purchaser shall be under a duty to have inquired about the amount of such assessment prior to closing, which if not paid shall be a lien on the Unit. Initially the Transfer/Set-Up Fee shall be \$250.00 per Unit and the Capital Improvement Fee shall be \$500 per Unit.

(d) Declarant/Builder Exemption. Notwithstanding the foregoing, the Declarant shall be exempt from all assessments, Transfer Fee/Set-Up Fee, and Capital Improvement Fee. Builders who have received title from Declarant shall be required to pay the Transfer/Set-Up Fee and Capital Improvement Fee but shall be exempt from all other assessments only during the six (6) months of ownership beginning with date of deed; however, subsequent transfer of title during the first year shall not relieve the new owner from liability for assessments from date of the new owner's deed forward.

(e) Effect of Non-payment of Assessments, Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per occurrence or highest rate allowed by state law, whichever rate is less, and shall be a lien against the lot, and shall further be the personal obligation of the person owning the lot at the time the assessment comes due. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, cost and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessments. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of the lot.

1. And now, for the purpose of better and more effectually securing the payment of said lien indebtedness, rendering unnecessary court proceedings for the enforcement of said lien in the event of the non-payment of said indebtedness and payments thereof, as they become due, and for the consideration of One Dollar paid in cash, receipt of which is acknowledged, the said Lot Owners, their heirs, administrators, successors and assigns, hereinafter referred to as trustors, hereby transfer and convey unto John W. Rodgers, Trustee of Rutherford County, Tennessee, his successors and assigns, the real estate hereinbefore described and specifically the property owned by the owner subject to this Declaration, with the appurtenances, estate, title and interest thereto belonging upon the following uses and trusts:

Trustors agree to pay their prorata share of Common Expenses when due and further agree to pay all taxes and assessments thereon, annual, initial, or special, and to pay them when due, and, upon demand of said trustee or the lawful owner and holder of said indebtedness, to pay, discharge, or remove, any and all liens (except a First Mortgage or Deed of Trust) which may be hereafter placed against said property and which shall adversely affect the lien of this instrument or enforcement of the terms and provisions hereof; to keep the improvements on said property in good repair and preservation pursuant to the requirements of this Declaration and the rules and regulations adopted by the Association, and in case the trustee or his successors or the lawful owner and holder of said indebtedness shall hereafter be required to appear in any court or tribunal to enforce, or defend the title to, or possession of, said property,

or the lien of this instrument, or appear in any court to prove the above indebtedness, all the costs and expenses of such appearance or proceedings, together with a reasonable attorney's fee, shall be allowed, and be payable by trustors upon demand of the trustee or lawful owner or holder of said indebtedness, and, upon failure to do any of these things, then said trustee, or the lawful owner and holder of said indebtedness may do any or all of these things and the amounts so paid shall bear interest at the rate of 18% per annum, or at the then highest contract rate of interest then legally collectible in Tennessee from the date of payment and shall be and become a part of the indebtedness secured hereby.

Now, if trustors shall pay their prorata share of Common Expenses aforesaid when due, and pay any and all sums when due, as aforesaid, then this trust conveyance shall be of no further force or effect. But if said indebtedness, or any payment thereof, or interest thereon, is not paid promptly when due, or if, failing to pay said other sums when due, as herein provided, trustors fail to reimburse the Trustee, or lawful owner and holder of said indebtedness for all sums, with interest, so expended by said Trustee, or lawful owner and holder of said indebtedness, within thirty days from date of such payment, this trust conveyance shall remain in full force and effect, and the said Trustee, or its successor or assigns in trust, is hereby authorized and empowered, upon giving twenty days notice by three publications in any newspaper, daily or weekly, published in Rutherford County, Tennessee, to sell said property at the east door of the Courthouse in said County to the highest bidder for cash, at public outcry, free from the equity or right (statutory or otherwise) of redemption, homestead, dower, spouse's elective share and all other rights and exemptions of every kind, which are hereby expressly waived; and the said Trustee, or its successor or assigns in trust, is authorized and empowered to execute and deliver a deed to the purchaser. The Association may bid at any sale under this trust conveyance. The Trustee may, at any time after default in the payment of any of said indebtedness, enter and take possession of said property, and shall only account for the net rents actually received. It is further agreed that, in the event the Trustee fails, before selling said property, as herein provided, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to him by the Trustee of a deed for said property. In case of sale hereunder, the proceeds will be applied by the Trustee as follows:

- 1st. To the full and complete satisfaction of the interest of the first mortgage holder, unless arrangements have been made for the assumption of the first mortgage by the subsequent purchaser.
- 2nd. To the payment of all costs, charges and expenses of executing this conveyance and enforcing said lien as herein provided; also reasonable attorney's fees for advice in the premises, or for instituting or defending any litigation which may arise on account of the execution of this conveyance, or the enforcement of said lien; also the expenses of any such litigation.
- 3rd. To the payment of all taxes which may be unpaid on said premises.
- 4th. To the payment of all unpaid indebtedness herein secured, and any and all sums expended in the protection of said property, as herein authorized.

5th. The residue, if any, will be paid to trustor(s) legally entitled thereto, their order, representatives or assigns.

In case of the death, absence, inability, or refusal to act of said Trustee at any time when action under the foregoing power and trusts may be required or for any other reason, the lawful owner and holder of said lien is hereby authorized and empowered to name and appoint a successor to execute this trust by an instrument in writing to be recorded in the Register's Office of Rutherford County, Tennessee, and the title herein conveyed to the above named Trustee shall be vested in said successor.

The word "Trustors" when used herein shall apply to parties both singular and plural.

The Board may temporarily suspend the voting rights of an Owner who is in default of payment of any Assessment after notice.

(f) Subordination of the Lien to Mortgages.

1. This transfer and conveyance, and the lien for common expenses payable by a Lot Owner which is secured by the transfer and conveyance shall both be subordinate to the lien of a recorded First Mortgage or Deed of Trust on the interest of such Lot Owner, regardless of whether the First Mortgage or Deed of Trust was recorded before or after this instrument, except for the amount of the proportionate share of common expenses which become due and payable from and after the date on which the Mortgagee or Beneficiary accepts a conveyance of any interest therein (other than as security) or forecloses its Mortgage or Deed of Trust. While the lien for assessments may be extinguished, the personal indebtedness therefor shall remain and be the personal obligation of the Lot Owner who owned the lot when the assessment came due. Any delinquent assessments (after lien extinguishment) may be reallocated and assessed among all Lots as a Common Expense. This subparagraph shall not be amended, changed, modified or rescinded except for the appointment of a substitute Trustee without the prior written consent of all First Mortgagees and Beneficiaries of record.

2. For purposes of this section a sale or transfer of a lot shall occur on the date of recordation of an instrument of title evidencing the conveyance of record title.

Section 2. Maintenance and Repair.

(a) Association Responsibility. The Association shall maintain and keep in good repair the Common Area shown on the plat of the development including, but not limited to, parks, alleyways, streets, street lights, sidewalks, and the main entrance.

The Association shall be responsible for additional maintenance which shall include cutting grass and edging to the garage of each unit though same are not part of the Common Area. The Association shall, as well, be responsible for the maintenance of the yards (including cutting of grass, edging and weeding) of each unit even though same are not part of the Common Area; provided, however, that in the event an Owner elects to fence in or otherwise enclose its



yard, the maintenance of the yard enclosed therein shall become the responsibility of that Unit Owner.

Additionally, the Association shall be responsible to maintain, repair, and replace, subject to any insurance then in effect, all trees, landscaping and other flora, structures, storm water control, as well as any improvements situated upon the Common Area.

In addition to the operation, maintenance, and management duties of the Association set forth in Section I above, the association shall provide for the maintenance, care, repair, and replacement of the following portions of the Residential Units:

The Association also shall maintain the exterior of each Residential Unit as follows: painting, maintenance, and structural and nonstructural repair of exterior building surfaces as the Board shall deem necessary, and proper, including roofs, gutters, downspouts exterior building surfaces, trees, shrubs, grass, replacement of trim, caulking and other repairs to roof covers, and other miscellaneous repairs. Such exterior maintenance shall not include glass surfaces (whether windows or sliding glass doors, storm doors, front or rear entry doors, screen, or patio covers) nor shall it include any fences, driveways, patios, and sidewalks that exclusively serve a single Unit. The balance of the Residential Units and the improvements located thereon shall be maintained by the Owner of the particular Residential Unit involved. In the event that an Owner fails to maintain his/her Unit and the improvements thereon in a manner satisfactory to the Board, the Association, after approval by a two-thirds (2/3) vote of the Board, shall have the right, through its agents and employees, to enter upon said Unit and to repair, maintain, and restore and maintain the Unit and the exterior portion of the Unit, including the lot on which it is situated, and another improvement situated thereon. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Unit is subject.

Notwithstanding the foregoing, if the need for exterior maintenance and repair by the Association as required by this paragraph is caused by the willful or negligent conduct or act of an Owner, his/her family, guest, invitees, or other Persons using or occupying his/her Residential Unit with his/her express or implied permission, the cost of such repair or maintenance shall be assessed against such owner and shall be due and payable thirty (30) days from the date of notice thereof, such Assessment to be collected and enforced as provided in Article VIII of this Declaration. Such Assessment shall not require the approval of any of the Members; provided, that any Owner against which any such assessment is levied shall be entitled to notice, a hearing, and an opportunity to do the corrective work required, as provided by Article XI, Section 3 hereof, prior to any Assessment being levied against such Owner in accordance with the provisions of this paragraph. For the sole purpose of performing the exterior maintenance upon each Residential Unit required by this Section 2, the duly authorized employees or agents of the Association shall have the right, after reasonable notice to the Owner, to enter upon or into any Residential Unit at reasonable hours of any day except Sunday.

The duly authorized agents or employees of the Association shall have the right to enter in or upon any Residential Unit or unto any structure thereon, without notice to the Owner thereof, when, in the judgment of the Association, acting through its Board of Directors, such

entrance is necessary to prevent damage to such Residential Unit or surrounding Residential Units by fire, criminal act, natural disaster, or other similar emergency.

(b) Owner's Responsibility. All maintenance of the interior portions of a Unit; those areas within enclosed patios or courtyards; all inside walls, ceilings, and structural components of a Unit; all patios, decks, balconies, fences, sidewalks and driveways serving only one Unit; and other improvements not maintained by the Association shall be the sole responsibility of the Owner thereof, who shall maintain said portions of the Unit in a manner consistent with the Declaration, these Bylaws, and such rules and regulations as may be established by the Board of Directors from time to time.

All the repairs of internal installations of the Unit such as water, light, gas, power, sewage, telephones, HVAC systems, sanitary installations, doors, windows and all other accessories belonging to the Unit area shall be at the Unit Owner's expense, including without limitation any pipes, ducts, etc, serving a Unit but not inside the Unit.

(c) A Unit Owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common area and facility damaged through his fault.

### Section 3. Use of Units and Internal Changes.

(a) A unit shall be for a Single Family Residence only and shall be used only in keeping with the zoning use restrictions that may be placed on the Property by the Town of Smyrna and Rutherford County, Tennessee. For purposes of this provision only, the term "Single Family Residence" shall mean a residence occupied by one or more individuals related by blood, marriage, or adoption.

(b) A Unit Owner shall not make structural modifications or alterations in his Unit or installations located therein without the written consent of the Association; a Unit Owner may notify the Association in writing through the Management Agency, if any, or through the President of the Association, if no Management Agent is employed, of any proposed modification or alteration. The Association shall have the obligation to answer within fifteen (15) days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration. Any authorized modifications to a Unit must be performed by a licensed contractor within the State of Tennessee.

Section 4. Right of Entry. A Unit Owner shall grant the right of entry to the Management Agent or to any other person authorized by the Board of Directors or the Association in case of any emergency originating in or threatening his Unit, whether the Unit Owner is present at the time or not. It is intended that this right of entry shall include the right of the Association to enter a Residential Unit to cure any condition, which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board. The Board shall further have the right of inspection and entry in order to perform the duties and obligations of the Board under the Declaration and these Bylaws. In addition, the Declarant, the Association, and their designees, shall have the right to enter upon a Unit for the purpose of cutting grass,

hedges, shrubbery and providing maintenance agreed upon with the Owner thereof. Any repairs made on behalf of a Unit Owner hereunder shall be reimbursed by said Unit Owner.

Section 5. Rules of Conduct. The following rules and regulations shall govern the use of the Common Elements, the Units and Unit Owners, family of the Owners invitees, licensees, lessees and occupants and may be amended at any time by the Board or by the Declarant (provided Declarant owns at least one of the Units). Any amendment to the Rules of the Association need not be recorded but shall be appended to the By-laws.

(a) During the Declarant Control Period as set forth in the Declaration, Declarant shall have the right and does hereby reserve to itself an easement over the property to construct and maintain any sign for sale or rent of a Unit; however, no Unit Owner shall post any signs, advertisements or posters of any kind in or on the project except as authorized by the Association or Declarant.

(b) No Unit Owner shall throw garbage or trash outside the disposal installations provided for such purposes in service areas.

(c) Unit owners agree to abide by the reasonable regulations of the Board of Directors which shall from time to time be promulgated.

(d) **Abandoned Personal Property.** Personal property, other than vehicles, shall not be kept, or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Elements, without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the Property owner's Unit, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property. The notice shall include the name and telephone number of the person or entity that will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

Neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

(e) **Animals.** No Owner or occupant may keep any pets other than generally recognized household pets on any portion of the Properties. Each Unit shall be limited to two (2) approved pets. No Owner or occupant may keep, breed or maintain any pet for any commercial purpose, and no structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Elements, without prior written Board approval. Unless

otherwise designated by the Association, no pets are allowed on any portion of the Common Elements; provided, however, an Owner or occupant may walk a pet across the Common Elements to enter or exit the Property or access portions of the Property where pets are permitted. Notwithstanding the foregoing, pets must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Elements and Limited Common Elements unless otherwise designated by the Association. Under no circumstances may pets be left unattended in any fenced area exclusively serving a Unit. Feces left by pets upon the Common Elements must be immediately removed by the person responsible for the pet.

Animals determined in the Board's sole discretion to be dangerous shall not be brought onto or kept on the Property at any time.

Any Owner or occupant who keeps or maintains any pet upon the Property shall be deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet.

(f) Antennas and Satellite Dishes. Unless otherwise approved by the Board, all television antennae, satellite dishes, dishes which receive video programming services via multipoint distribution services and any other device used for the reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution (wireless cable) services must be one (1) meter or less in diameter, must be located to the rear of a Unit (unless such location would preclude reception of an acceptable quality signal) and may not be affixed to any portion of the Common Elements. In the event such devices are installed outside of these guidelines the Board may take such actions deemed appropriate and within the scope of any law or regulation to cause a correction to be made by the responsible Owner. Further, neither the Association, nor the Board shall be responsible for repairs necessitated by the improper installation of such device on the exterior of any Unit.

(g) Artificial Vegetation. Artificial vegetation is prohibited on the Property.

(h) Clotheslines. Clotheslines are prohibited on the Property.

(i) Common Property. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without the prior written consent of the Board, except as specifically provided herein. There shall be no use of the roofs of the Units by the Owners, their family members, guests, tenants, invitees, agents or contractors. There shall be no gardening or landscaping on the Common Elements by Owners or occupants without the prior written consent of the Board. In the event the Board gives consent to an Owner to landscape the area immediately adjacent to the Owner's Unit, the cost of such and the continued maintenance and upkeep shall be the responsibility of the Owner. However, the Board shall have the power to revoke the approval and to take any action the Board seems necessary in the event the landscaping is improperly installed or maintained. This subparagraph shall not apply to Declarant, for so long as Declarant owns a Unit for sale.

(j) Fences. No fence or fencing-type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the Property, except original installation required by zoning conditions or perimeter fencing established by Declarant during construction of the development, without first obtaining approval from the ARC or the Board of Directors, which approval may be withheld its sole and absolute discretion. All fencing must be of vinyl material and match the color and profile of fencing originally installed by the Declarant.

(k) Flags. No flags, banners, or the like shall be permitted on or about the Units; provided, however, that a Unit owner shall be permitted to fly one (1) American Flag no larger than 3ft by 5ft.

(l) Garages. It is prohibited for an Owner or occupant of a Unit that includes a garage to convert such garage to any other use. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible. Notwithstanding the forgoing, in no event shall there be permitted more than two (2) vehicles per Unit. In no event shall any vehicle block any sidewalk, and parking on the street shall be strictly prohibited. Guest parking spots will be available on the Property with a maximum parking duration of 72 hours.

(m) Garage and Yard Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved in writing by the Board of Directors.

(n) Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Unit; (2) street lights in conformity with an established street lighting program for the Property.

(o) Parking. Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Tennessee Department of Motor Vehicles), recreational vehicles (RVs and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than Sheriffs, Marshals or police officers' vehicles marked as such, are also prohibited from being parked on the Property, except in garages, or designated parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exterior shall be allowed temporarily on the Property during normal business hours for the purpose of serving any Unit or Common Element; provided, however, no such vehicle shall remain on the Common Elements overnight or for any purpose unless prior written consent of the Board is first obtained. The terms of this provisions shall not apply to any Unit or any portion of the Property owned by Declarant.

(p) Private Streets. The Private Street and parking areas shall be subject to the Declaration and By-laws regarding use of Common Elements. Additionally, Owners of Units and other permitted users of the Private Street and parking areas shall be obligated to refrain from any actions which would deter from or interfere with the use and enjoyment of the Private Streets and parking areas by authorized users. Prohibited activities shall include, without limitation,

obstruction of the Private Street and Parking Areas. All vehicular traffic on the Private Street and in parking areas shall be subject to the provisions of the state and local laws concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing modifications of those in force on public streets, within the Property. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of state and local laws and such rules and regulations promulgated by the Association, to the extent such rules and regulations of the Association are more restrictive than such state and local laws, the rules and regulations of the Association shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Tennessee may operate any type of motor vehicles within the Property. All vehicles of any kind and nature which are operated on the Private Street in the Property shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all Owners and occupants.

(q) Prohibition of Damage, Nuisance and Noise. Without the prior written consent of the Board of Directors, nothing shall be done or kept on the Property, which would increase the rate of insurance on the Property or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

The Units in the Property are built in close proximity to one another, therefore, an Owner or occupant shall not conduct activities within a Unit or use a Unit in a manner that interferes with or causes disruption to the use and quiet enjoyment of another Unit by its respective Owner and occupant.

Furthermore, noxious, destructive or offensive activity shall not be carried on within any portion of the Property. No Owner or occupant of a Unit may use or allow the use of the Unit or any portion of the Property at any time, in any way or for any purpose which may endanger the health, unreasonably annoy or disturb or cause embarrassment, or discomfort to other Owners or occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance. In addition, no Owner or occupant of a Unit may use or allow the use of a Unit or the Common Elements in any manner which creates disturbing noises, including, without limitation, use of stereo speakers or equipment that will in the sole discretion of the Board of Directors interfere with the rights, comfort or convenience of the other Owners or occupants. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

No Owner, occupant or agent of such Owner or occupant shall do any work which, in the reasonable opinion of the Association's Board of Directors or its designee, would jeopardize the soundness or safety of the Property or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without in every such case the unanimous, prior written consent of all members of the Association and their Mortgagees.

No damage to or waste of the Common Elements, or any part thereof, shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or occupants of his or her Unit.

(r) Residential Use. Each Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Unit or any part of the Property.

(s) Rubbish, Trash and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed in the Common Elements, temporarily or otherwise. All garbage or trash shall be placed in trash receptacles that are stored within the Unit's Private Elements or Limited Common Elements, except as provided herein.

(t) Signs. Except as provided for herein or as may be required by legal proceedings, and except for signs which may be erected by Declarant related to the development and sale of Units, no signs, advertising posters, flyers, political placards or billboards of any kind shall be erected, placed, or permitted or remain on the Property without the prior written consent of the Board or its designee, except that one (1) professional security sign and one for-sale sign not to exceed six inches (6") by six inches (6") in size may be displayed from within a Unit. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association.

(u) Unsightly and Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

(v) Vehicles, Limited Number. A Unit Owner, combined with every tenant and occupant of the Unit, shall be limited to keeping two (2) vehicles on the Property. Unless the number of vehicles exceeds the capacity of the Owner's garage, each vehicle when not in use must be kept in the garage pursuant to subparagraph (i) of this Section 5. Any vehicles in excess of the vehicles stored in the garage shall be parked in a parking space as near as possible to that Owner's Unit.

(w) Window Air-Conditioning Units. Window Air-Conditioning Units are prohibited.

(x) Window Treatments. The color of all window treatments visible from the outside of the Unit must be white or off-white. Bed sheets shall not be used as window treatments.

(y) Leases and Rental Agreements. Units, or any portion thereof, may not be leased except as expressly allowed in this section.

(i) Owner Occupied Rentals. With regard to rentals in which the owner continues to permanently reside in the home throughout the term of the rental and the owner only rents a portion of the owner's home, Owners are allowed to lease their homes so long as the term of the lease is for a term of ninety (90) days or more and meets the requirements of subsection (iii).

(ii) Non-Owner Occupied Rentals. With regard to rentals in which the owner does not permanently reside in the home during the term rental, Owners are allowed to lease their homes so long as the term of the lease is twelve (12) months or more and meets the requirements of subsection (iii).

(iii) Any lease or rental agreement for a home must be in writing and filed with the Association within thirty (30) days of the earlier of the following (i) the date of execution of the lease; or (ii) the commencement date of the lease. All leases shall provide that the tenants are subject to compliance with the rules and restrictions under the Declaration, amendments thereto, and of the Association. Owners are required to attach a copy of the Declaration, and all amendments thereto, as exhibit to the lease and have the tenants sign a written agreement acknowledging receipt of the same and agreement to comply with the terms of the same.

(iv) All rentals for less than (90) days are prohibited. All rentals or leasing of home, lots, or any portion thereof is prohibited except as expressly allowed in this section. No subleasing of houses is allowed. Homes may only be rented to single individual or single family. Homes may not be rented or occupied as a residence by multiple families.

(z) Landscaping. Except as otherwise provided herein, the Association shall have the right and the obligation at any time to plant, replace, maintain, and cultivate shrubs, trees, grass plantings, and other landscaping upon the Common Area located on the Properties, and, subject to the conditions stated below, on all or any portion of a Unit. Furthermore, the Association shall re-mulch the landscaped areas twice per year. The Association will also bear the cost of maintenance and repairs to any irrigation systems installed by the Association or the Declarant and will pay the water bill associated therewith. No Owner shall remove, alter, or injure in any way shrubs, trees, grass, plants, or other landscaping placed upon or about his Unit by Declarant or the Association, without first obtaining the written consent of the Board of the Association. Notwithstanding the foregoing, each Owner shall be responsible for maintaining the landscaped areas adjacent the Owner's Unit.

No Owner shall permit any plant, tree, shrubbery or other similar item to exist upon any portion of such Owner's Residential Unit that shall damage or create a nuisance on another Unit. The Board shall determine conclusively, in its sole and absolute discretion, whether, for the purpose of this paragraph, a particular plant, tree, shrubbery, or other similar item is a nuisance and therefore to be removed from the Properties.

(aa) Declarant's Access to Properties. So long as Declarant owns any of the Properties, Declarant shall have the right to keep open any security gate(s) to the Properties for purposes of sales, marketing, construction or other related purposes and the Association shall not have the right to prevent such action by Declarant.



(bb) **Additional Restrictions.** The Board of Directors shall be entitled to invoke additional rules and regulations from time to time for the operation, use, and maintenance of the Properties located within its jurisdiction, including the Units and the Common Area, provided such rules and regulations are not inconsistent with this Declaration.

(cc) **Inspection and Enforcement.** The Board may establish procedures and policies for inspection of Units and enforcement of existing requirements, including the assessment of fines, which may be established by the Board from time to time.

(dd) **Basketball Goals, Trampolines and Lawn Accessories.** No basketball goals, trampolines, bird baths, frog ponds, decorative banners, lawn sculptures, artificial plants, birdhouses, statues or similar types of accessories are permitted on any lot without prior written approval of the Architectural Review Committee.

(ee) **Unauthorized Structures.** No Unit Owner may construct or place any outbuilding or shed on the Property without the prior written approval of the Association or the Architectural Committee.

[SIGNATURE PAGE TO FOLLOW]

**DECLARANT:**

ALCORN PROPERTIES, LLC

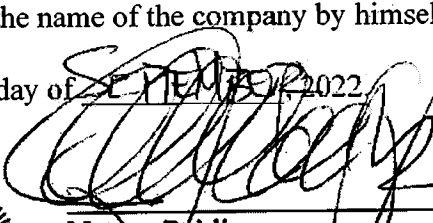
By:   
DAVID ALCORN, President

STATE OF TENNESSEE            )  
COUNTY OF RUTHERFORD    )

Personally appeared before me, a notary public in and for the state and county  
aforementioned, DAVID ALCORN, with whom I am personally acquainted or proved to me on  
the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be President of  
ALCORN PROPERTIES, LLC and that he as such President executed the foregoing instrument  
for the purposes therein contained, by signing the name of the company by himself as President.

Witness my hand and seal this 5 day of SEPTEMBER 2022



  
Notary Public  
My commission expires: 2/20

**EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
CEDAR CREEK TOWNHOMES**

**THE PROPERTY**

All that tract or parcel of land located in the Third Civil District of Rutherford County, Tennessee, situated on both sides of Rocky Fork Road and being more particularly described according to a survey prepared by H&H Land Surveying, Inc. dated October 11, 2010 and proceeding as follows:

Commencing at a point at the intersection of the southern right-of-way of Wildwood Drive and the eastern right-of-way of Rocky Fork Road;

Thence, South 34°08'36" West for a distance of 551.55 feet along eastern right-of-way of Rocky Fork Road to an iron pin at the southern property line of Lester E. and Susan G. Bey shown on Tax Map 33 as Parcel 72 and recorded in Deed Book 517, page 166 in the Register's Office of Rutherford County, Tennessee, (R.O.R.C.T.) and the point of beginning;

1. Thence, South 53°02'20" East for a distance of 563.05 feet along at the southern property line of Lester E. and Susan G. Bey to an iron pin;
2. Thence, South 74°19'31" East for a distance of 233.04 feet along the southern line of Lester E. and Susan G. Bey to an iron pin in the western line of RJS Properties shown on Tax Map 33K D, as parcel 98.00 and being shown as Addition to Village of Valley Green, Section One, recorded in Plat Book 31, page 226, R.O.R.C.T.;
3. Thence, South 14°44'54" East for a distance of 177.35 feet along the western line of RJS Properties to an iron pin in the northern line of Thomas Edward Spann Property shown on Tax Map 33 as parcel 70.1 and recorded in Deed Book 525, page 93, R.O.R.C.T.;
4. Thence, North 74°11'50" West for a distance of 44.50 feet along the Northern line of Thomas Edward Spann property to an iron pin;
5. Thence, North 74°20'10" West for a distance of 528.04 feet along the northern line of Thomas Edward Spann property to an iron pin;
6. Thence, South 89°50'11" West for a distance of 453.43 feet to an iron pin on the eastern right-of-way of Rocky Fork Road;
7. Thence, North 55°47'37" West for a distance of 50.73 feet across Rocky Fork Road to a point on the western right-of-way of Rocky Fork Road;
8. Thence, North 34°12'23" East for a distance of 378.92 feet along the western right-of-way of Rocky Fork Road to an iron pin;

9. Thence, North 49°58'12" West for a distance of 728.40 feet to an iron pin in the eastern line of Prime Land Co. Property shown on Tax Map 33, as Parcel 53, and recorded in Deed Book 587, page 460, R.O.R.C.T.;

10. Thence, North 08°32'58" East for a distance of 329.60 feet to an iron pin;

11. Thence, North 13°39'16" West for a distance of 12.95 feet to an iron pin in the southern line of Charles Neal and Dottie P. Simms and Marilyn H. Wilson property shown on Tax Map 33 as Parcel 51.01 and recorded in Deed Book 530, page 3938, R.O.R.C.T.;

12. Thence continuing along the southern line of Charles Neal and Dottie P. Simms and Marilyn H. Wilson property for the next seven calls, North 71°03'53" East for a distance of 115.97 feet to an iron pin;

13. Thence, South 29°33'56" East for a distance of 183.60 feet to an iron pin;

14. Thence, South 39°56'14" East for a distance of 213.04 feet to an iron pin;

15. Thence, South 39°03'28" East for a distance of 173.96 feet to an iron pin;

16. Thence, South 31°58'54" East for a distance of 130.31 feet to an iron pin;

17. Thence, South 11°20'53" East for a distance of 125.54 feet to an iron pin;

18. Thence, South 26°44'53" East for a distance of 71.30 feet to a point on the western right-of-way of Rocky Fork Road;

19. Thence, South 55°47'37" East for a distance of 50.73 feet to a point on the eastern right-of-way of Rocky Fork Road;

20. Thence, North 34°12'23" East for a distance of 20.55 feet along the eastern right-of-way of Rocky Fork Road to the Point of Beginning.

LESS AND EXCEPT the area within the right-of-way of Rocky Fork Road being more particularly described as follows:

Commencing at a point at the intersection of the south right-of-way of Wildwood Drive and the eastern Right-of-Way of Rocky Fork Road;

Thence, South 34°12'23" West for a distance of 551.55 feet along eastern right-of-way of Rocky Fork Road to an iron pin at the southern property line of Lester E. and Susan G. Bey shown on Tax Map 33 as Parcel 72 and recorded in Deed Book 517, page 166 in the Register's Office of Rutherford County, Tennessee, (R.O.R.C.T.) and the point of beginning;

1. Thence, South 34°12'23" West for a distance of 486.85 feet along the eastern right-of-way of Rocky Fork Road to an iron pin;

2. Thence, North 55°47'37" West for a distance of 50.73 feet across Rocky Fork Road to an iron pin;
3. Thence, North 34°12'23" East for a distance of 486.85 feet to an along the western right-of-way of Rocky Fork Road to an iron pin;
4. Thence, South 55°47'37" East for a distance of 50.73 feet across Rocky Fork Road to the point of beginning.

The total area minus the right-of-way of Rocky Fork Road equals 441,498 square feet or 10.14 acres more or less.

INCLUDED in this conveyance is a permanent easement from the existing sewer lines located on TRACT 1 to include ingress and egress for purposes of installing and maintaining sewer lines over and under TRACT 1 to TRACT 2, and to use for such other general purposes compatible with residential uses of the neighborhood.

INCLUDED IN THIS ABOVE PROPERTY DESCRIPTION BUT EXCLUDED FROM THIS CONVEYANCE is the following parcel of land conveyed to Manuel Martinez and wife, Beatriz Martinez by Warranty Deed filed for record on October 3, 2012 in Record Book 1163, page 3024, said Register's Office.

All that tract or parcel of land located in the Third Civil District of Rutherford County, Tennessee, being more particularly described as the portion of Tract 2 lying east of Rocky Fork Road shown on a boundary survey of Sarah Pauline Sullivan Property prepared by H&H Land Surveying, Inc. dated October 11, 2010, recorded in Plat Book 35, page 193, in the Register's Office for Rutherford County, Tennessee, and proceeding as follows:

Commencing at a point at the intersection of the southern right-of-way of Wildwood Drive and the eastern right-of-way of Rocky Fork Road;

Thence, South 34°08'36" West for a distance of 531.00 feet along eastern right-of-way of Rocky Fork Road to an iron pin at the southern property line of Lester E. and Susan G. Bey shown on Tax Map 33, Parcel 72 and recorded in Deed Book 517, page 166, in the Register's Office of Rutherford County, Tennessee (R.O.R.C.T.) and the point of beginning;

1. Thence, South 53°02'20" East for a distance of 563.05 feet along at the southern property line of Lester E. and Susan G. Bey to an iron pin;
2. Thence, South 74°19'31" East for a distance of 233.04 feet along the southern line of Lester E. and Susan G. Bey to an iron pin in the western line of RJS Properties shown on Tax Map 33K D, as parcel 98.00 and being shown as Addition to Village of Valley Green, Section One, recorded in Plat Book 31, page 228, R.O.R.C.T.;

3. Thence, South 14°44'54" East for a distance of 177.35 feet along the western line of RJS Properties to an iron pin in the northern line of Thomas Edward Spann Property shown on Tax Map 33 at parcel 70.0 and recorded in Deed Book 525, page 93, R.O.R.C.T.;
4. Thence, North 74°11'50" West for a distance of 44.50 feet along the Northern line of Thomas Edward Spann property to an iron pin;
5. Thence, North 74°20'10" West for a distance of 528.04 feet along the northern line of Thomas Edward Spann property to an iron pin;
- 6, Thence, South 89°50'11" West for a distance of 453.43 feet to an iron pin on the eastern right-of-way of Rocky Fork Road;
7. Thence, North 34°12'23" East for a distance of 507.40 feet along the eastern right-of-way of Rocky Fork Road to the point of beginning.

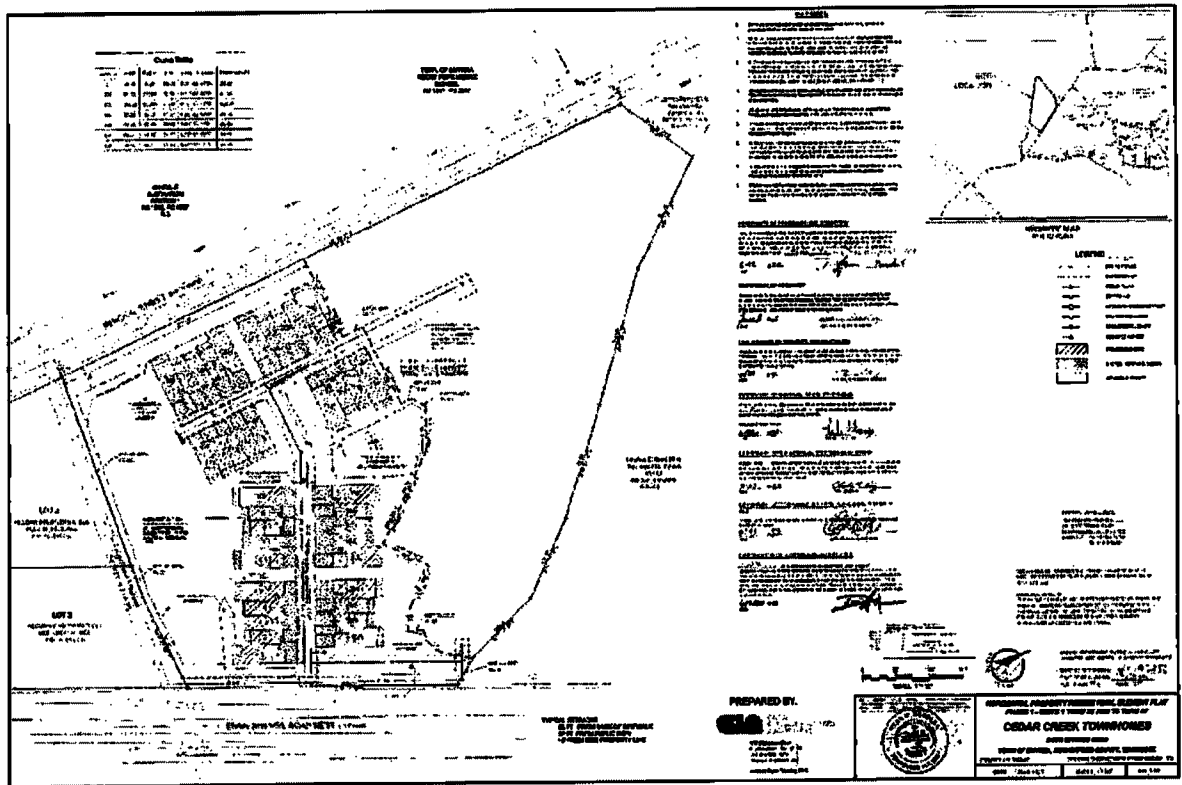
Said parcel contains 222,158 square feet or 5.10 acres, more or less as described by the above courses and distances.

INCLUDED IN THE ABOVE PROPERTY DESCRIPTION BUT EXCLUDED FROM THIS CONVEYANCE is the following Fee Simple Right-of-Way in Record Book 1610, page 3373, said Register's Office.

Beginning at a point on the existing north right of way line of Rocky Fork Road, said point being N 26 deg. 40 min. 28 sec. E a distance of 259.07 feet from the proposed intersection of Big Son Lane and Enon Springs Road West, more particularly described as being the Sarah Pauline Sullivan southeast property corner and being approximately 34.18 feet left of the proposed Enon Springs Road West centerline approximate station 128+58.94; thence S 89 deg. 12 min. 24 sec. W, along said property line, a distance of 28.49 feet to a point on the proposed Enon Springs Road West right of way line; thence N 34 deg. 15 min. 20 sec. E, along said proposed right of way, a distance of 426.59 feet to a point on the Sarah Pauline Sullivan northern property line; thence S 49 deg. 58 min. 10 sec. E, along said property line, a distance of 23.06 feet to a point on the existing north right of way line of Rocky Fork Road, said point being the Sarah Pauline Sullivan northeast property corner; thence S 34 deg. 12 min. 09 sec. W, along said existing right of way, a distance of 407.91 feet to the point of beginning, being a portion of the property of record in Deed Book 382, Page 279 in the Rutherford County Registers Office and containing 9,653 square feet (0.2216 acre) more or less.

**EXHIBIT B  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
CEDAR CREEK TOWNHOMES**

**THE PLAT**



**EXHIBIT C  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
CEDAR CREEK TOWNHOMES**

**BY-LAWS  
OF  
CEDAR CREEK TOWNHOMES HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I  
LOCATION**

The development to be administered under these By-Laws shall be located in Smyrna, Rutherford County, Tennessee, and more particularly as shown on the plat which is attached to the Declaration as Exhibit B (hereinafter referred to as the "Development" or "Project") and shall be subject to the Tennessee Horizontal Property Act in Tennessee Code Annotated, Section 66-27-101, et seq., and as from time to time amended (the "Act").

**ARTICLE II  
APPLICATION AND ACCEPTANCE**

All present or future owners, tenants, future tenants, or their employees, or any other persons who might use the facilities of the project in any manner, are subject to the regulations set forth in these By-Laws. The acquisition or rental of any of the Units of the project or occupancy of any of said buildings shall signify that these By-Laws are accepted, ratified, and obligatory.

These By-Laws and each change made in accordance herewith and pursuant to the Declaration and the Act are and shall be covenants running with each Unit and binding on each successive owner, lessee or mortgagee of each Unit in the Project, including properties annexed under this Horizontal Property Regime in accordance with the Declaration submitted simultaneously herewith.

**ARTICLE III  
VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES**

Section 1. Voting. Except for Declarant, each Unit Owner shall have one (1) vote. Declarant shall have eight (8) votes for every Unit owned.

Section 2. Majority of Owners. As used in these By-Laws, the term "majority of owners" shall mean those Unit Owners holding over fifty (50%) percent of the votes.

Section 3. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of a "majority of owners" as defined in Section 2 of this Article shall constitute a quorum.



Section 4. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of each meeting.

#### **ARTICLE IV ADMINISTRATION**

Section 1. Association Responsibilities. The Unit Owners will constitute the Association who will have the responsibility of administering the project, approving the annual budget, establishing and collecting assessments and arranging for the management of the project. Except as otherwise provided, decisions and resolutions of the Association shall require approval by a majority of owners.

In the event that a Unit Owner is a corporation, limited liability company or partnership, then that entity shall designate one of the shareholders, officers or directors, members or partners as that entity's representative and member of the Association.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the project or such suitable place convenient to the Unit Owners as may be designated by the Board of Directors.

Section 3. Annual Meetings. The first annual meeting of the Association shall be held at a time and place declared by the Declarant. Thereafter, the annual meetings shall be held on the second Monday of January, unless a holiday, and then on the following Tuesday, of each succeeding year. At such meetings there shall be elected by ballot of the Unit Owners a Board of Directors in accordance with requirements of Section 5 of Article V of these By-Laws. The Unit Owners may also transact such other business of the Association as may properly come before them.

Section 4. Special Meetings. It shall be the duty of the President to call a special meeting of the Unit Owners as directed by resolutions of the Board of Directors, or upon a petition signed by a majority of the owners and having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of all of the Unit Owners present, either in person or by proxy.

Section 5. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof, as well as the time and place where it is to be held, to each Unit Owner of record, at least five (5) but not more than ten (10) days prior to such meeting. The mailing of a notice in the manner provided in this Section shall be considered notice served.

Section 6. Adjourned meetings. If any meeting of the Unit Owners cannot be organized because a quorum has not attended, the Unit Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

**ARTICLE V  
BOARD OF DIRECTORS**

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of no more than five (5) persons nor less than three (3) persons.

Section 2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these By-Laws prohibited.

Section 3. Other Duties. In addition to duties imposed by these By-Laws or by resolutions of the Association, the Board of Directors shall be responsible for the following:

- (a) Care, upkeep, operation and maintenance of the project and the common areas and facilities and the limited common areas and facilities.
- (b) Collection of assessments from the Unit Owners.
- (c) Designation and dismissal of the personnel necessary for the maintenance and operation of the project, the common areas and facilities and the limited common areas and facilities.

Section 4. Management Agent. The Board of Directors may employ for the Association a Management Agent at a compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in Section 3 of this Article.

Section 5. Election and Term of Office. At the first annual meeting of the Association one (1) Director shall be elected for a period of one (1) year, one (1) Director shall be elected for a period of two (2) years, and one (1) Director shall be elected for a period of three (3) years so as to stagger the terms of the Directors. Thereafter, as the term of each Director expires his successor shall be elected for a period of one (1) year.

Section 6. Vacancies. Subject to and except for the Special Declarant Rights set forth in the Declaration, vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association, shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall take office immediately.

Section 7. Removal of Directors. Subject to and except for the Special Declarant Rights set forth in the Declaration, at any regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority of the Unit Owners and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Unit Owners shall be given an opportunity to be heard at the meeting.

Section 8. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election, at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the Board shall be present.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone, or telegraph, at least three (3) days prior to the day named for such meeting.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the president on three (3) days' notice to each Director, given personally or by mail, telephone, or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice, on the written request of any one (1) Director.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Board of Directors' Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall constitute a common expense to be paid by the Association.

Section 14. Liability of the Board of Directors. The members of the Board of Directors shall not be liable to the co-owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the members of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors affecting the project unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these By-Laws. It is intended that the members of the Board of Directors shall have no personal

liability with respect to any contract made by them on behalf of the project. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder, as his interest in the common elements bears to the interest of all the Unit Owners in the common elements. Every agreement made by the Board of Directors or by the managing agent or by the manager on behalf of the Development shall provide that the members of the Board of Directors or the managing agent, or the manager, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interest of all Unit Owners in the common elements.

Section 15. Interim Powers of Declarant. Until the first election and meeting of Directors, Declarant shall be charged with the responsibility of directing the affairs of the Association and in so doing may, but shall not be required to, appoint up to a maximum of three (3) Owners to serve in an advisory capacity. Declarant, in directing the affairs of the Association, shall have all of the powers herein otherwise delegated to the Association.

Additionally, until the election and first meeting of directors or until the Association has sufficient funds, Declarant may expend its own funds toward operating costs for the common expenses of the Association. All such money expended shall be treated as a loan to the Association bearing interest at the New York Prime Rate and payable to Declarant on demand.

## **ARTICLE VI OFFICERS**

The following Sections of this Article VI are subject to and except for the Special Declarant Rights set forth in the Declaration.

Section 1. Designation. The principal officers of the Association shall be a President, Vice-President and a Secretary/Treasurer, all of whom shall be elected by and from the Board of Directors. The Directors may appoint such other officers as in their judgment may be necessary and they need not be members of the Board of Directors.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organization and meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all the general powers and duties which are usually vested in the office of the president of an

Association, including but not limited to the power to appoint committees from among the Unit Owners from time to time as he may in his discretion decide to be appropriate to assist in the conduct of the affairs of the Association.

Section 5. Vice-President. The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint some other member of the Board to so do on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 6. Secretary/Treasurer. The Secretary/Treasurer shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board of Directors may direct; and he shall in general, perform all the duties incident to the office of the Secretary. He shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

## **ARTICLE VII AMENDMENTS**

Section 1. By-Laws. These By-Laws may be amended by the Association in a duly constituted meeting for such purpose and no amendment shall take effect unless approved by Unit Owners representing at least seventy-five percent (75%) percent of the total voting power of all Units in the project as shown in the Declaration or by Declarant, its successors and assigns, without the joinder or consent of the Association or its members. This instrument may only be amended by the Declarant until all Units have been sold by the Declarant to purchaser(s) unrelated to Declarant.

Section 2. Voting Power. Voting power of the Unit Owners may be amended by amendment to the Declaration and these By-Laws.

## **ARTICLE VIII MORTGAGEES**

Section 1. Notice to Association. A Unit Owner who mortgages his Unit shall notify the Association through the Management Agent, if any, or the President of the Board of Directors in the event there is no Management Agent, the name and address of his mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Units".

Section 2. Notice of Unpaid Assessments. The Association shall at the request of a mortgagee of a Unit report any unpaid assessments due from the Unit Owner.

**ARTICLE IX  
COMPLIANCE**

These By-Laws are set forth to comply with the requirements of the Tennessee Horizontal Property Regime Act.

**THE UNDERSIGNED hereby declares these By-Laws as governing provisions of the CEDAR CREEK TOWNHOMES HOMEOWNERS' ASSOCIATION, INC., and consents to all obligations imposed on the undersigned.**

DECLARANT:

ALCORN PROPERTIES, LLC

By:   
\_\_\_\_\_  
DAVID ALCORN, President

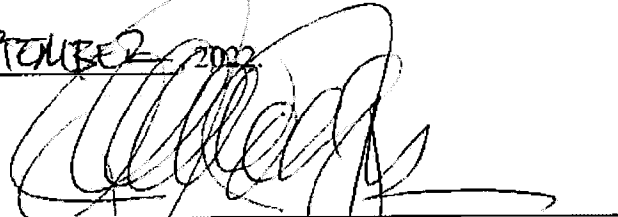
**EXHIBIT D  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
CEDAR CREEK TOWNHOMES**

**ATTORNEY'S CERTIFICATE**

This document is intended to serve as the attorney's opinion which is required under the terms of Tennessee Code Annotated, Section 66-27-103. The undersigned, John W. Rodgers, an attorney licensed to practice law in the State of Tennessee, hereby declares (i) that the Declarant, ALCORN PROPERTIES, LLC, has indicated that all improvements shall be in substantial compliance with local building codes and (ii) that upon proper recording of this certificate and the following additional documents, all legal requirements for the creation of a Planned Unit Development under the terms of the Tennessee Horizontal Property Act, Tennessee Code Annotated, Section 66-27-103(b), have been met:

- (1) Declaration of Covenants, Conditions and Restrictions for Cedar Creek Townhomes, a Horizontal Property Regime with Private Elements.
- (2) By-laws of Cedar Creek Townhomes Homeowners' Association, Inc.
- (3) Plat for Cedar Creek Townhomes, which plat shows private elements.
- (4) Charter of Cedar Creek Townhomes Subdivision Homeowners' Association, Inc.

Witness my hand this 8 day of SEPTEMBER 2002

  
\_\_\_\_\_  
JOHN W. RODGERS

Tennessee Certification of Electronic Document

I, Jessica L. Tolley, do hereby make oath that I am the custodian of the original version of the electronic document tendered for registration herewith and that this electronic document is a true and exact copy of the original document executed and authenticated according to law on 9/8/22 (date of document).

Jessica L. Tolley  
Affiant Signature

9/8/22  
Date

State of Tennessee

County of Rutherford

Sworn to and subscribed before me this 8 day of September, 2022.



Christine Vella

Notary Signature

My Commission Expires: 8/15/2026