

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

Willow Creek

Sweetwater, Tennessee

This instrument Prepared by:

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

WILLOW CREEK

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WILLOW CREEK ("Declaration") is made as of the date set forth on the signature page hereof by The Worthington Group of Tennessee, LLC, a Tennessee limited liability company (referred to herein as the "Declarant").

Declarant is the owner of the real property described on Exhibit "A," which is attached and incorporated by reference. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Willow Creek Community Association, Inc. to own, operate and maintain Common Areas and Improvements and to administer and enforce the provisions of this Declaration and the By-Laws (capitalized terms are defined in Article 1 below).

It is contemplated that the Properties will be developed as a residential development with complementary commercial components, comprised of various office, retail, and other permitted uses allowed under the Zoning Ordinance, with public and/or private streets, sidewalks, street lights, open spaces and other Common Areas and Improvements for the benefit of the Owners made subject to the terms of this Declaration.

The Declarant hereby declares that all of the property described on Exhibit "A", Phase I Willow Creek and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

ARTICLE 1: DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 **"Additional Property"**: All of that certain real property which is more particularly described on Exhibit "B", which is attached and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.2 **"Area of Common Responsibility"**: The Common Area, together with those areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, the Zoning Ordinance, or other applicable covenant, contract, or agreement.

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1.3 **"Articles of Incorporation" or "Charter"**: The Charter of Willow Creek Community Association, Inc., as filed with the Secretary of State of the State of Tennessee.

1.4 **"Association"**: Willow Creek Community Association, Inc., a Tennessee nonprofit mutual benefit corporation, its successors or assigns.

1.5 **"Board of Directors" or "Board"**: The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Tennessee corporate law.

1.6 **"By-Laws"**: The By-Laws of Willow Creek Community Association, Inc., as they may be amended.

1.7 **"Common Area"**: All real and personal property, including easements and licenses, which the Association owns, leases or holds or use rights in for the common use and enjoyment of the Owners. The term also shall include the Exclusive Common Area, if any, as defined below.

1.8 **"Common Expenses"**: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.9 **"Community-Wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the Design Review Board (DRB).

1.10 **"Cost Sharing Agreement"**: Any agreement, contract or covenant between the Association and an owner or leasehold owner of property adjacent to, in the vicinity of, or within the Properties, including any Private Amenity, for the allocation of expenses for amenities and/or services that benefit both the Association and the owner or leasehold owner of such property.

1.11 **"Days"**: Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday in the State of Tennessee, then such time period shall be automatically extended to the close of business on the next regular business day.

1.12 **"Declarant"**: The Worthington Group of Tennessee, LLC, a Tennessee limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A", Phase I or Exhibit "B", The Master Plan for Willow Creek, for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) "Declarant" hereunder at any one time.

1.13 **"Declarant-Related Entity"**: Any Person or entity which is a parent, subsidiary or affiliate of the Declarant, and/or in which the Declarant or any parent, subsidiary or affiliate of the Declarant or any officer, director, shareholder, partner, member, manager or trustee of any of the foregoing owns, directly or indirectly, not less than thirty-three percent (33%) of such entity.

1.14 **"Development Period"**: The period of time during which the Declarant or any Declarant-Related Entity owns any property which is subject to this Declaration, any Additional Property or any Private Amenity, or has the unilateral right to subject Additional Property to this Declaration

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pursuant to Section 7.1; provided however, the Development Period shall not terminate until one hundred percent (100%) of the total number of Parcels permitted by the Master Plan for the property described on Exhibits "A" and "B" have certificates of occupancy issued thereon by the controlling governmental authority, have been conveyed to Persons other than the Declarant or a Declarant-Related Entity and initial vertical construction on each Parcel is complete. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and/or terminate the Development Period upon an earlier date by recording a written instrument in the Public Records. Notwithstanding the above or any provision in the Governing Documents to the contrary, the Development Period shall terminate not later than twenty-five (25) years after the date that this Declaration is recorded in the Public Records.

1.15 **"Neighborhood"**: One or more Parcels which share common interests, other than those common to all Parcels in the Properties, as more particularly described in Section 3.3. For example, and by way of illustration and not limitation, an office complex comprised of several Parcels surrounding a common plaza, a retail/commercial center comprised of various Parcels sharing common parking areas, a condominium, or a separately developed single family housing development each might be designated as separate Neighborhoods. A Neighborhood may be comprised of more than one use and may include noncontiguous tracts of property. Neighborhood boundaries may be established and modified as provided in Section 3.3

1.16 **"Neighborhood Assessments"**: Assessments levied against the Parcels in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 8.1 and 8.3.

1.17 **"Neighborhood Association"**: Any condominium association or other owners associations having concurrent jurisdiction with the Association over any Neighborhood.

1.18 **"Neighborhood Expenses"**: The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Parcels within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Neighborhood(s).

1.19 **"DRB"**: The Design Review Board as described in Section 9.2.

1.20 **"Exclusive Common Area"**: A portion of the Common Area intended for the exclusive use or primary benefit of one (1) or more, but less than all, Neighborhoods or Parcels, as more particularly described in Article 2.

1.21 **"General Assessments"**: Assessments levied on all Parcels subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Parcels, as more particularly described in Sections 8.1 and 8.2.

1.22 **"Governing Documents"**: The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, any design guidelines, the Zoning Ordinance, rules of the Association, any Lake or Water Use Restrictions, any and/or all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties, or any of the above, as each may be amended from time to time.

1.23 **"Improvement"**: Any structure or improvement, broadly defined to include but not be limited to, buildings of a permanent or temporary nature (with temporary buildings being permitted only during the construction of other Improvements, subject to approval by the DRB), outbuildings, underground installations, slope alterations, surface water drainage facilities, sediment control devices, roads, berms, driveways, alley ways, parking areas or facilities, and areas, garbage dumpsters and cans,

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fences, screening walls, retaining walls, enclosures, stairs, decks, windbreaks, planting or removal of trees, shrubs and other landscaping materials, irrigation systems, poles, signs, antennas and satellite dishes, Utilities, heating, cooling and air circulation equipment and facilities, roofed structures, hedges, exterior illumination, staking, clearing, excavation, grading, exterior alteration of existing improvements, and all other structures or landscaping improvements of every type and kind initially or at any time thereafter placed or constructed on any Parcel.

1.24 “Lake/Stream”: Any body of water located within the Properties which is or will be owned by the Association and subject to the Lake/Stream Use Restrictions.

1.25 “Lake/Stream” Use Restrictions”: Use restrictions, rules and procedures for the Lakes/Streams promulgated by the Association and/or governed by the Tennessee Department of Environment and Conservation (TDEC).

1.26 “Leasehold Owner”: The lessee under any lease of a Parcel with an initial term of not less than twenty (20) years, and which lessee has been assigned all of the Owner’s rights and obligations under this Declaration with respect to the leased premises.

1.27 “Majority”: Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.28 “Master Plan”: The Conceptual Master Plan for Willow Creek prepared by Arcadis Engineering Associates, Chattanooga, Tennessee, as such plan may be amended from time to time, which plan includes the property described on Exhibit “A” Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit “B” from the Master Plan bar its later annexation in accordance with Article 7. The Declarant shall not be bound by any Master Plan, use or restriction of use shown on any Master Plan, and may, in its sole discretion and from time to time, change or revise the Master Plan, develop or not develop the remaining undeveloped property or Common Area or amenities shown on any Master Plan. Notwithstanding the above, all present and future references to the Master Plan shall refer to the then latest version of the Master Plan prepared for the Declarant.

1.29 “Member”: A Person subject to membership in the Association pursuant to Section 3.2.

1.30 “Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Parcel.

1.31 “Mortgagee”: A beneficiary or holder of a Mortgage.

1.32 “Occupant”: The Owner or Leasehold Owner of any Parcel and their respective employees, agents, tenants, independent contractors, invitees and licensees or any other Person who either lawfully or unlawfully occupies or comes upon such Parcel. All actions or omissions of any Occupant shall be deemed the actions or omissions of the Owner or Leasehold Owner of such Parcel.

1.33 “Owner”: One (1) or more Persons who hold the record title to any Parcel, including the Declarant and any Declarant-Related Entity, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Parcel is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner. An Owner (including the Declarant or any Declarant-Related Entity) who has transferred or otherwise conveyed a leasehold interest in and to any Parcel to a Leasehold Owner may, in its sole discretion, assign in such lease, all of such Owner’s rights and obligations as an owner herein; provided, however, that any

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such assignment shall not relieve such Owner from its duties and obligations hereunder except as expressly provided herein. From and after receipt of such assignment, Declarant, the Association and the DRB shall recognize the Leasehold Owner as the Owner of such Parcel.

1.34 **"Parcel"**: A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed. Each separately platted lot shall be deemed to be a separate Parcel, regardless of the number of uses or businesses operated on such lot, unless otherwise specified by the applicable Supplemental Declaration. The term shall refer to the land, if any, which is part of the Parcel as well as any Improvements thereon. In the case of a portion of the Properties intended and suitable for subdivision but as to which no final lot subdivision map has been filed, such property shall be deemed to be a single Parcel until such time as a final lot subdivision map is filed of record with respect to all or a portion of the property. This term shall not include Common Area, common property owned by any Neighborhood Association, or property owned by or dedicated to the public.

1.35 **"Person"**: A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.36 **"Private Amenity"**: Certain real property and any Improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties which are owned and operated, in whole or in part, by Persons other than the Association for recreational or other purposes. Any Private Amenity shall be designated by the Declarant in its sole discretion. The use of the term "Private Amenity" shall not be construed to imply or require a private club. Private Amenities may be operated on a club membership, daily fee, use fee, public, or private basis or otherwise.

1.37 **"Properties"**: The real property described on Exhibit "A" as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.38 **"Public Records"**: The Registers Office of Monroe County, Tennessee, or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.39 **"Willow Creek"**: That certain mixed use residential and commercial community located on the property described on Exhibits "A" and "B" in the City of Sweetwater, Monroe County, Tennessee developed by the Declarant and commonly known and referred to as Willow Creek.

1.40 **"Special Assessment"**: Assessments levied in accordance with Section 8.5.

1.41 **"Specific Assessment"**: Assessments levied in accordance with Section 8.6.

1.42 **"Supplemental Declaration"**: An instrument filed in the Public Records which subjects Additional Property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land.

1.43 **"Utilities"**: Any utilities serving any portion of the Properties or any Common Areas, including, without limitation, public water, sewage and sewer service, storm drains, gas, electricity, telephone, internet, intranet, cable, digital or similar television services, solar or passive energy sources or any other utilities of any nature whatsoever.

1.44 **"Voting Delegate"**: Any representative selected by the Class "A" Members within each Neighborhood to be responsible for casting all Class "A" votes attributable to Parcels in the

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Neighborhood on matters requiring a vote of the membership. The term "Voting Delegate" shall also refer to any alternate Voting Delegate acting in the absence of a Voting Delegate.

1.45 "Voting Group": One (1) or more Members who vote on a common slate for election of directors to the Board of Directors of the Association, as more particularly described in Section 3.5.

1.46 "Zoning Ordinance": The zoning category and zoning conditions and any development agreement with the City of Sweetwater, Tennessee applicable to Willow Creek, as such may be amended from time to time.

ARTICLE 2: PROPERTY RIGHTS

2.1 Common Area Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Parcel, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of invitees who may use the Common Area;
- (d) The right of the Board to allow persons other than Owners, Occupants and their respective employees, lessees, invitees, clients, customers and guests to use any facilities situated upon the Common Area upon such conditions and fees as may be established by the Board;
- (e) The right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Common Area pursuant to Section 4.3;
- (f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;
- (g) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (h) The right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents (subject to the provisions of the Zoning Ordinance as set out in further detail in Section 4.2 below);
- (i) The rights of certain Owners to the exclusive use, access and enjoyment of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.2; and
- (j) The right of the Declarant and any Declarant-Related Entity to conduct activities and establish facilities within the Properties as provided in Article 13.

Any Owner may extend its right of use and enjoyment to such Owner's employees, lessees, invitees, clients, customers, and guests, as applicable, subject to the reasonable regulation by the Board.

2.2 Exclusive Common Area. Certain portions of the Common Area may be designated and recorded by plat as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and Occupants of specified Parcels or Neighborhoods. Exclusive Common Areas may include,

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but not be limited to, recreational and social facilities, entry features, parking areas, landscaped medians, parks and open spaces and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed to the Owners of Parcels to which the Exclusive Common Areas are assigned.

Initially, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned in the deed by which the Common Area is conveyed to the Association, or in this Declaration, or any Supplemental Declaration and/or on the subdivision plat relating to such Common Area; provided however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Parcels and/or Neighborhoods during the Development Period. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of particular Parcels or a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Members holding a Majority of the total Class "A" votes in the Association, including, if applicable, a Majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Area is assigned, if previously assigned, and within the Neighborhood(s) to which the Exclusive Common Area is to be assigned or reassigned. During the Development Period, any such assignment or reassignment shall also require the Declarant's written consent.

The Association may, upon approval of a Majority of the Class "A" votes within the Neighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Parcels in other Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses or Specific Assessments attributable to such Exclusive Common Area.

2.3 **Lakes/Streams.** Access to and use of the Lakes/Streams is strictly subject to the Lake Use Restrictions and no Person gains any right to enter or to use the Lakes/Streams or to gain access to the Lakes/Streams from the Properties. Each Owner acknowledges and agrees to strictly abide by the Lake/Stream Use Restrictions. Any Person, including any Owner, using any Lake/Stream for any purpose shall assume the risk of such use. Under no circumstance shall the Declarant, any Declarant-Related Entity, the Association, or any Person acting on their behalf assume any liability for use of any Lake/Stream by an Owner, its invitees, or licensees.

2.4 **No Partition.** Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from and is no longer subject to the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.5 **Condemnation.** The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain or be conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds of such conveyance. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Area on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land

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included in the Common Area to the extent available, unless within sixty (60) Days after such taking the Members holding at least sixty-seven percent (67%) of the total Class "A" vote of the Association and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the DRB. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any Improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

2.6 Amenities Access to and use of any Amenity is strictly subject to the rules and regulation of the Community Association as set forth by the Declarant, any Declarant-Related Entity and/or the Board of Directors Person(s) and their guests shall gain right to use such amenity by virtue of membership in the Association by ownership or occupancy of a Parcel. All Persons, including all Owners and Occupants, are hereby advised that no representations or warranties have been or are made by the Declarant, any Declarant-Related Entity, the Association, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the Board of the Community Association which has owner of the Amenity.

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Parcel. If a Parcel is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2 and in the By-Laws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

3.2 Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have the number of votes allocated to the Parcel in which they hold the interest required for membership under Section 3.1 in accordance with the formula set forth in Exhibit "C".

If there is more than one (1) Owner of a Parcel, the votes for such Parcel shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Parcel's vote shall be suspended if more than one (1) Person seeks to exercise it. No vote shall be exercised on behalf of any Parcel if any assessment for such Parcel is delinquent. In addition, no vote shall be exercised for any property which is exempt from assessment.

If Voting Delegates have been elected by a Neighborhood pursuant to Section 3.4, the vote for each Parcel owned by a Class "A" Member shall be exercised by the Voting Delegate representing the Neighborhood of which the Parcel is a part, as provided in such Section. **EK M165 PG 254**

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this

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Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint the members of the Board of Directors until termination of the Development Period. Upon termination of the Development Period, the Class "B" membership shall expire, and the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Parcel which it owns.

(c) Additional Classes of Membership. The Declarant may, by Supplemental Declaration, create additional classes of membership for the Owners of Parcels within any Additional Property made subject to this Declaration pursuant to Article 7, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

3.3 Neighborhoods. Every Parcel shall be located within a Neighborhood; provided however, unless and until additional Neighborhoods are established, the Properties shall consist of one (1) Neighborhood. The Declarant, in its sole discretion, may establish Neighborhoods within the Properties by designation on Exhibit "A" to this Declaration, a Supplemental Declaration, or a plat. During the Development Period, the Declarant may unilaterally amend this Declaration, any Supplemental Declaration or any plat from time to time to assign property to a specific Neighborhood, to redesignate Neighborhood boundaries, or to remove property from a specific Neighborhood.

The Parcels within a particular Neighborhood may be subject to additional covenants and/or the Parcel Owners may be members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except as required by law. Any Neighborhood which does not have a Neighborhood Association may, but shall not be obligated to, establish a Neighborhood Committee, as described in the By-Laws, to represent the interests of Owners of Parcels in such Neighborhood. No Neighborhood Association or Neighborhood Committee shall be formed or otherwise established without the prior submission to and written approval of Declarant of all documents creating or establishing such Neighborhood Association or Neighborhood Committee, including without limitation, the submission of any declaration of covenants, conditions and restrictions, declaration of condominium, articles of incorporation, by-laws and other organizational and governing documents.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Parcels in such Neighborhood and, upon the affirmative vote, written consent, or a combination thereof, of Owners of a Majority of the Parcels within the Neighborhood, the Association may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided any such administrative charge shall apply at a uniform rate per Parcel to all Neighborhoods receiving the same service), shall be assessed against the Parcels within such Neighborhood as a Neighborhood Assessment pursuant to Article 8 hereof.

3.4 Voting Delegates. The Board in its sole discretion shall determine whether Voting Delegates shall be elected for each Neighborhood; provided, however, all Neighborhoods which are similarly situated shall be treated the same. Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Parcels on any issue requiring a vote of the Voting Delegates under this Declaration, the By-Laws or the Articles.

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If the Board determines that Voting Delegates shall be elected, the elections and Voting Delegates shall be subject to the following procedures unless the Governing Documents for such Neighborhood provide for stricter requirements:

(a) The Board shall send notice of the election of a Voting Delegate to all

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Owners within the Neighborhood; provided, however, the first election of a Voting Delegate for any Neighborhood shall not be held until at least fifty percent (50%) of the Parcels planned for such Neighborhood have been conveyed to Persons other than the Declarant or a Declarant-Related Entity. After the initial election of a Voting Delegate for a Neighborhood, subsequent elections shall take place on an annual basis.

(b) Elections may take place by written ballot cast by mail or at a meeting of the Class "A" Members within each Neighborhood, as the Board determines; provided, however, upon written petition signed by Class "A" Members holding at least ten percent (10%) of the votes attributable to Parcels within any Neighborhood, the election for such Neighborhood shall be held at a meeting.

(c) The presence, in person or by proxy, of Class "A" Members representing at least ten percent (10%) of the total Class "A" votes attributable to Parcels in the Neighborhood shall constitute a quorum at any Neighborhood meeting. Each Class "A" Member who owns a Parcel within the Neighborhood shall be entitled to cast the number of votes allocated to the Parcel in accordance with the formula set forth in Exhibit "C".

(d) At each election, the Owners within each Neighborhood shall elect a Voting Delegate who shall be responsible for casting all votes attributable to Parcels owned by Class "A" Members in the Neighborhood on all Association matters requiring a membership vote. In addition, each Neighborhood shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate. The candidate who receives the greatest number of votes shall be elected as Voting Delegate and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of one (1) year and until their successors are elected. No Person shall be eligible to serve as a Voting Delegate or an alternate Voting Delegate if any assessment for such Person's Parcel is delinquent.

(e) Any Voting Delegate or alternate Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owners holding at least a Majority of the total Class "A" votes attributable to Parcels in the Neighborhood which the Voting Delegate or alternate Voting Delegate represents. Any Voting Delegate or alternate Voting Delegate shall be automatically removed and ineligible to cast the votes attributable to Parcels in such Voting Delegate's Neighborhood if any assessment for such Voting Delegate's Parcel is delinquent. Upon removal of a Voting Delegate or an alternate, a successor shall be elected by the Owners of Parcels within the Neighborhood to fill the vacancy for the remainder of such delegate's term.

(f) Prior to taking a vote on any issue requiring membership approval, the Association shall distribute proxies to all Members represented by Voting Delegates allowing each Member to direct in writing how such Member's vote is to be cast with respect to such issue by the Voting Delegate who represents such Member. The Voting Delegates shall be required to cast all votes for which specific proxies are returned in the manner directed in such proxies. All other votes may be cast as the Voting Delegate deems appropriate in its sole discretion. The Board may adopt resolutions establishing additional procedures for polling Members.

(g) Notwithstanding anything to the contrary above, with respect to any portion of the Properties that is subject to the jurisdiction of a Neighborhood Association, the Voting Delegate and alternate Voting Delegate for such Neighborhood shall be the president and secretary of the Neighborhood Association, respectively.

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3.5 **Voting Groups.** The Declarant may designate Voting Groups consisting of one (1) or more Neighborhoods for the purpose of electing directors to the Board. The designation of Voting Groups, if any, shall promote representation on the Board of Directors for various groups having dissimilar interests. Following termination of the Development Period, the number of Voting Groups within the Properties shall not exceed the total number of directors to be elected by the Class "A"

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Members pursuant to the By-Laws. The Members within each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of directors specified in the By-Laws.

The Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Development Period by filing with the Association and in the Public Records a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Parcels within each Voting Group can easily be determined. Such designation may be unilaterally amended from time to time by the Declarant during the Development Period.

After expiration of the Declarant's right to amend any designation of Voting Groups as provided above, the Board shall have the limited right to file or amend any Supplemental Declaration for the sole purpose of designating Voting Groups. Neither recordation nor amendment of such Supplemental Declaration shall constitute an amendment to this Declaration, and no consent or approval of any Person shall be required except as stated in this Section. Until such time as Voting Groups are established, all of the Properties shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed, any and all portions of the Properties which are not assigned to a specific Voting Group shall constitute a single Voting Group.

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 **Function of Association.** The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all Improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Tennessee.

4.2 **Personal Property and Real Property for Common Use.** The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, including but not limited to any Declarant-Related Entity, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any Improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section, including, without limitation, dredging or otherwise removing silt from any Lake, pond, stream, or other body of water that may be conveyed. During the Development Period, the Association shall reconvey to Declarant any portions of the Properties originally conveyed by Declarant to the Association for no consideration upon written request of Declarant.

Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in Section 3.22 of the By-Laws. Such sanctions may include, without limitation:

(a) imposing monetary fines which shall constitute a lien upon the Parcel of the violator. (In the event that any Occupant, employee, lessee, invitee, client, customer or guest of a Parcel violates the Governing Documents and a fine is imposed, the fine may first be assessed against the Occupant; provided however, if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.);

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- (b) filing liens in the Public Records for non-payment of any assessments or fees;
- (c) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (d) suspending an Owner's right to vote;
- (e) suspending any Person's right to use facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Parcel; and
- (f) suspending any services provided by the Association to an Owner or the Owner's Parcel if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

In the event that any Occupant, employee, lessee, invitee, client, customer or guest of a Parcel Owner violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction the Occupant and/or the Owner of such Parcel.

In addition, the Board, or committee, if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments and other charges, the towing of vehicles that are in violation of parking rules, or the correction of any maintenance, construction or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the By-Laws. The Association may levy a Specific Assessment to cover all costs incurred in bringing a Parcel into compliance with the terms of the Governing Documents in accordance with Section 8.6(c).

The Association may also elect to enforce any provisions of the Governing Documents by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover from the Owner or other person or entity all costs, including, without limitation, reasonable attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county, city, state and federal ordinances, if applicable, and permit local and other governments to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.3 **Implied Rights; Board Authority.** The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by applicable law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

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4.4 **Governmental Interests.** During the Development Period, the Declarant may designate sites within the Properties as public or quasi-public facilities. No membership approval shall be required for such designation. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents.

4.5 **Indemnification.** The Association shall indemnify every officer, director, DRB member and committee member against all damages, liabilities, and expenses, including reasonable attorneys fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, DRB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Tennessee law.

The officers, directors, DRB members if and when appointed by the Declarant and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance or malfeasance, willful misconduct, or bad faith. The officers, directors, DRB members, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, DRB members or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, DRB member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, DRB member or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.6 **Dedication of or Grant of Easements on Common Area.** The Association, or during the Development Period, the Declarant, may dedicate or grant easements across portions of the Common Area to Monroe County, Tennessee, or the City of Sweetwater, Tennessee, or to any other local, state, or federal governmental or quasi-governmental entity.

4.7 **Rezoning.** No Owner or any other Person may apply or join in an application to amend, vary or modify the Zoning Ordinance or rezone or apply for any zoning variance or waiver as to all or any portion of the Properties without the prior written consent of the Board. Every Person that acquires any interest in the Properties acknowledges that Willow Creek is a master planned community, the development of which is likely to extend over several years, and agrees not to protest, challenge or otherwise disagree with (a) changes in uses or density of property outside of his Parcel, or (b) changes in the Master Plan relating to property outside of his Parcel. Declarant or any Declarant-Related Entity may apply for such rezoning as to any portion of the Properties owned by it at any time.

4.8 **Security.** Each Owner and Occupant of a Parcel, and their respective employees, lessees, invitees, clients, customers and guests, shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the Declarant, any Declarant-Related Entity, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measure, including any system for limiting access to the Properties, cannot be compromised or

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circumvented, nor that any such security system or measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its lessees and all Occupants of its Parcel that the Association, its Board of Directors and committees, Declarant, and any Declarant-Related Entity, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including the contents of structures located upon the Parcels, resulting from acts of third parties. Any costs incurred by the Association to provide such services shall be paid by the Association and shall be charged either to all Parcels as a General Assessment or a Special Assessment, or only to those certain Neighborhoods or Parcels benefited thereby, as a Specific Assessment or a Neighborhood Assessment, as determined by the Board in its sole discretion.

4.9 **Relationship With Tax-Exempt Organizations.** The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area, or convey portions of the Common Area, to non-profit, tax-exempt organizations for the benefit of the Properties. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

4.10 **Lakes/Streams.** Neither the Association, the original Declarant, any Declarant-Related Entity nor any successor Declarant shall be held liable for any loss or damage by reason of use of any Lake for any purpose by Owners, their invitees, licensees, and tenants. Each Owner acknowledges, understands and covenants to inform its tenants and all Occupants of its Parcel that the Association, its Board of Directors, DRB and committees, Declarant, any Declarant-Related Entity, and any successor Declarant are not insurers and that each Person using the Lakes shall do so only as permitted under the Lake Use Restrictions and applicable governmental laws, ordinances, rules and regulations. Each Person assumes all risks of personal injury, and loss or damage to property, including Parcels, resulting from or associated with use of the Lakes/Streams.

4.11 **View Impairment.** Neither the Declarant, any Declarant-Related Entity, the Association, nor the owners of any Private Amenities, guarantees or represents that any view over and across any Lake, other water body, Common Area, public park or other facility or Private Amenity from Parcels will be preserved without impairment. The owners of such areas shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping or to install improvements or barriers (both natural and artificial) to such areas from time to time. Any such additions or changes may diminish or obstruct any view from the Parcels and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view of a Lake, other water body, Common Area, public park or other facility or Private Amenity which the Parcel may enjoy as of the date of the purchase of the Parcel may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) within such areas.

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4.12 **Powers of the Association Relating to Neighborhood Associations.** The Association may veto any action taken or contemplated by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also may require specific action to be taken by any Neighborhood Association to fulfill its obligations and responsibilities under any Governing Document. For example, the Association may require that specific maintenance or repairs or aesthetic changes be

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performed by the Neighborhood Association. If the Neighborhood Association fails to comply with such requirements within a reasonable time as specified in writing by the Association, the Association may effect such action on behalf of the Neighborhood Association and assess the Parcels within such Neighborhood for any expenses incurred by the Association in taking such action. Such assessments may be collected as a Specific Assessment.

4.13 Provision of Services. The Association may provide or contract for services and facilities for the Owners, Occupants, and their employees, lessees, invitees, clients, customers and guests. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant or any Declarant-Related Entities, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or charged to the benefited Parcel(s) as a Specific Assessment. By way of example, some services and facilities which may be provided include cable, digital, satellite or similar television services, internet, intranet or other computer related services, fire protection, Utilities, patrols or security services, special and promotional events coordination, and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to add, modify or cancel any services or facilities being provided. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

4.14 Future Development. Each Owner acknowledges, understands and covenants to inform its lessees and all Occupants of its Parcel that the Properties and areas adjacent to the Properties are subject to further development and expansion, and therefore, there may be certain inconveniences during any period of construction, and Owner as well as any of its tenants or Occupants of its Parcel waives all claims with respect thereto. Owner agrees that if Owner or Owner's employees, lessees, invitees, clients, customers, guests, contractors or agents enter onto any area of construction, they do so at their own risk, and that the Declarant, all Declarant-Related Entities, the Association, and their respective contractors, agents or employees shall not be liable for any damage, loss or injury to such persons.

ARTICLE 5: MAINTENANCE

5.1 Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which may include, but need not be limited to:

all Common Area;

all street trees, landscaping and other flora, parks, structures, and Improvements, including any bike and pedestrian pathways/trails, parking areas and sidewalks situated upon the Common Area;

all furnishings, equipment and other personal property of the Association;

any street trees, street furniture, street lighting fixtures, landscaping and other flora, parks, bike and pedestrian pathways/trails, sidewalks, buffers, structures and Improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to or within the Properties as deemed necessary in the discretion of the Board;

any Lakes/Streams (provided that the Association may leave the Lakes/Streams in their natural state without further obligation for maintenance);

any storm water management facilities serving the Properties (if not maintained by a governmental agency or located on or within a Parcel);

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all planter strips and landscaping within any rights-of-way, medians, roundabouts or squares of the roadways within or adjacent to the Properties to the extent that the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard;

all entry signs and features serving the Properties, constructed by or on behalf of the Declarant, excluding entry signs and features which are maintained by a Neighborhood Association or Parcel Owner;

all signage within or adjacent to public rights-of-way within or adjacent to the Properties which the Board, in its sole discretion, deems appropriate;

such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, the Zoning Ordinance, or any contract or agreement for maintenance thereof entered into by the Association; and

any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may, as a Common Expense, maintain other property and Improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding sixty-seven percent (67%) of the Class "A" votes in the Association and, during the Development Period, the Declarant agree in writing to discontinue such operation.

(c) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or a Neighborhood Association or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

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(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Parcels as part of the General Assessment without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense and assessed as a Neighborhood Assessment solely against the Parcels within the Neighborhood(s) to which the Exclusive Common Areas

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are assigned, or a Specific Assessment against the particular Parcels to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

(e) During the Development Period, if the Association fails to perform its maintenance responsibilities hereunder properly and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred. In addition the City of Sweetwater, Tennessee, shall have the right to perform such maintenance responsibilities subject to the provisions of and to the extent set forth in the Zoning Ordinance. The Association shall maintain the Common Area in reasonable order and condition in accordance with the Master Plan adopted by the City. Failure of the Association to maintain the Common Area in such condition as required by the Zoning Ordinance shall permit the City to exercise the remedies set forth in the Zoning Ordinance. In particular, if the Association fails to maintain the Common Area in reasonable order and condition in accordance with the Master Plan City of Sweetwater, Tennessee, (the "City") may serve written notice upon the Association, as the owner of the Common Area, in accordance with the Zoning Ordinance. The Association shall have thirty (30) days from receipt of the notice to correct and cure any deficiencies. If the Association has continued to fail to maintain the Common Area, then a public hearing shall be held, after notice to the Association and the Owners of the applicable Units. If, after a public hearing, the City determines that the Association has materially failed to diligently attempt to maintain the Common Area, then the City shall have the right to call upon any private or public agency to maintain the Common Area for such period of time as is reasonably necessary to rectify the Common Area maintenance issues, with such time period not to exceed one (1) year. The City shall review the Association's maintenance efforts thereafter on an annual basis and hold a public hearing to determine the Associations' ability to resume control of the Common Areas. Declarant shall have the right to amend this paragraph of the Declaration upon any change in the applicable Zoning Ordinance.

5.2 **Owner's Responsibility.** Each Owner shall maintain its Parcel, and all Improvements located thereon, including without limitation, all structures, parking areas, irrigation systems, drainage facilities, landscaping, setback areas and other Improvements located in rights-of-way adjacent to the Owner's Parcel in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association. Such maintenance includes but is not limited to the following:

- (a) Removal of all litter, trash, refuse and waste at least once a week and keeping the trash pick-up, service and loading areas in a neat condition;
- (b) Lawn mowing on a regular basis such that the grass level on undeveloped land is not higher than twelve inches (12") and the grass level on developed land is not higher than four inches (4");
- (c) Tree and shrub pruning;
- (d) Keeping exterior lighting, signage, fixtures, and mechanical facilities in working order;
- (e) Keeping plant materials within lawn and garden areas alive, and any adjoining rights-of-way or drainage ditches attractive and free of trash and debris;
- (f) Promptly removing and replacing any dead plant material;
- (g) Keeping parking areas, driveways, in good repair;
- (h) Striping of parking areas and repainting of Improvements, as applicable; and

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(i) Repair of exterior damage to Improvements and keeping exterior Improvements in good repair.

Every Owner shall also be responsible for the security and safety of its Parcel notwithstanding any measures which may be provided by the Association.

In addition to any other enforcement rights, if an Owner fails properly to perform its maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Parcel and the Owner in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association or its designee under this Section shall not constitute a trespass.

5.3 **Neighborhood's Responsibility.** Upon resolution of the Board of Directors, the Owners of Parcels within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, rights-of-way and green space between the Neighborhood and adjacent public roads, streets or alleys within the Neighborhood, regardless of ownership or the Person performing the maintenance; provided however, all Neighborhoods which are similarly situated shall be treated the same.

Any Neighborhood Association having responsibility for maintenance within a particular Neighborhood pursuant to additional covenants applicable to such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may perform such responsibilities and assess the costs as a Specific Assessment against all Parcels within such Neighborhood as provided in Section 8.6.

5.4 **Standard of Performance.** Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association or Neighborhood Association nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5 **Party Structures.**

(a) **General Rules of Law to Apply.** Each sidewalk, driveway or similar structure which serves and/or separates any two (2) adjoining Parcels shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) **Damage and Destruction.** If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligence or willful acts or omissions.

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(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

Blanket property insurance for all insurable Improvements within the Area of Common Responsibility;

Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members;

Workers compensation insurance and employers liability insurance, if and to the extent required by law;

Directors and officers liability coverage;

Fidelity insurance covering all Persons responsible for handling Association funds; and

Such additional insurance as the Board, in its best business judgment, determines advisable or is required by law.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") or its successor entity as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of one hundred percent (100%) of current "replacement cost" of all effected Improvements and other insurance property or the maximum limit of coverage available, whichever is less.

In addition, the Association may obtain and maintain property insurance on the insurable Improvements within any Neighborhood in such amounts and with such coverages as the Owners in such Neighborhood may agree upon pursuant to Section 3.3. Any such policies shall provide for a certificate of insurance to be furnished to the Neighborhood Association and to the Owner of each Parcel insured upon request.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment, except that (i) premiums for property insurance obtained on behalf of a Neighborhood shall be charged to the Owners of Parcels within the benefited Neighborhood as a Neighborhood Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefited unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, their employees, lessees, invitees, clients, customers or guests, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Parcels pursuant to Section 8.6.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the

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sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the Sweetwater, Tennessee, area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

All insurance coverage obtained by the Board shall:

(1) be written with a company authorized to do business in the State of Tennessee which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(2) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners of Parcels within the Neighborhood and their Mortgagees, as their interests may appear;

(3) not be brought into contribution with insurance purchased by Owners, Occupants, or their Mortgagees individually;

(4) contain an inflation guard endorsement;

(5) include an agreed amount endorsement, if the policy contains a co-insurance clause; and

(6) include an endorsement requiring at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(7) a waiver of subrogation as to any claims against the Board, its agents, officers, employees, Members, guests and manager(s);

(8) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(9) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(10) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(11) a cross liability provision; and

(12) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

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(c) Damage and Destruction. In the event of any insured loss, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or Improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and during the Development Period the Declarant, decide within sixty (60) Days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional Days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative Improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Neighborhood, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Parcel.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2 Owners' Insurance. By virtue of taking title to a Parcel, each Owner covenants and agrees with all other Owners and with the Association to carry liability and property insurance with limits of not less than the full replacement cost of all insurable Improvements on its Parcel, less a reasonable deductible.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising its Parcel, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Parcel of all debris and ruins and maintain the Parcel in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall also apply to any Neighborhood Association that owns common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Parcel. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Parcels within such Neighborhood and for clearing and maintaining the Parcels in the event the structures are not rebuilt or reconstructed.

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ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY

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7.1 **Annexation by Declarant.** Until twenty-five (25) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property to be annexed, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2 **Annexation by Membership.** The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members holding a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3 **Withdrawal of Property.** The Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall uniform scheme of development for Willow Creek and/or to the extent that such property was originally subjected in error. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Board shall consent to such withdrawal, with such consent by the Association deemed to be given upon the filing of an amendment as required herein by the Public Records.

7.4 **Additional Covenants and Easements.** The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration, filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of the property affected by such additional covenants and easements, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration, including but not limited to provisions relating to assessment obligations, capitalization amounts and transfer fees, as they apply to the subject property in order to reflect the different character and intended use of such property.

7.5 **Amendment.** Notwithstanding anything to the contrary contained in this Declaration, this Article 7 shall not be amended during the Development Period without the prior written consent of Declarant.

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ARTICLE 8: ASSESSMENTS

8.1 Creation of Assessments. Assessments are hereby created for Association expenses as the Board may specifically authorize from time to time. There shall be four (4) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Parcels as described in Section 8.2; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Parcels within a particular Neighborhood or Neighborhoods as described in Section 8.3; (c) Special Assessments as described in Section 8.5; and (d) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys fees, shall be a charge and continuing lien upon each Parcel against which the assessment or charge is made until paid, as more particularly provided in Section 8.7. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorneys fees, also shall be the personal obligation of the Person who was the Owner of such Parcel at the time the assessment arose. Upon a transfer of title to a Parcel, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Parcel by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer or designee setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Parcel and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment, and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on its Parcel, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt itself from liability for assessments by Owner's non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment of its Parcel, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or Improvements, or from any other action taken by the Association or Board. The Association is specifically authorized to fully or partially exempt certain Parcels from liability for and payment of assessments as the Board may from time to time determine in its sole discretion.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant, any Declarant-Related Entity, or other entities for payment of Common Expenses.

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The Governing Documents applicable to each Neighborhood may designate one or more Persons who shall be responsible for collecting all assessments levied against Parcels within such Neighborhood (such Person or Persons hereinafter defined and referred to as the "Neighborhood Assessor"). The Neighborhood Assessor shall pay the full amount of such assessments to the Association on or before the date that such assessments are due. No Neighborhood Assessor may claim set-off nor abatement based upon such Person's inability or failure to collect such assessments from the Owners of Parcels within such Neighborhood. If the Governing Documents applicable to a particular Neighborhood create a Neighborhood Association, the Neighborhood Association shall serve as the Neighborhood Assessor.

8.2 Computation of General Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year. The budget may also include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4.

General Assessments to be levied against each Parcel subject to assessment shall be calculated in accordance with the formula set forth in Exhibit "C". The aggregate amount of the assessments shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Parcels reasonably anticipated to become subject to assessment during the fiscal year, and any income expected to be generated from any Cost Sharing Agreement.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials which may be treated as either a contribution or a loan, in the Declarant's discretion. The Board of Directors, specifically including members of the Board appointed by the Declarant, shall be authorized to execute a promissory note or notes on behalf of the Association to evidence the repayment obligation of the Association; provided however, the failure to execute such a note shall in no way diminish such obligation. Any anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall calculate the total amount of General Assessments to be allocated to each Parcel based on the formula set forth in Exhibit "C". The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner and Neighborhood Assessor at least thirty (30) Days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after the date of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

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If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. If the proposed budget is disapproved, or if the Board fails to determine a budget for any year, or if the budget proves inadequate for any reason, or if the use of

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a Parcel changes and affects the assessment obligation of the Owner of such Parcel, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to each Owner and Neighborhood Assessor at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

8.3 Computation of Neighborhood Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association and, upon approval of Owners within such Neighborhood in accordance with Section 3.3, any additional costs shall be added to such budget. Such budget may include a contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated among all Parcels within the Neighborhood(s) benefited thereby in accordance with the formula set forth in Exhibit "C" and levied as a Neighborhood Assessment.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to the Owner of each Parcel in the Neighborhood and the Neighborhood Assessor at least thirty (30) Days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by Owners of a Majority of the Parcels in the Neighborhood to which the Neighborhood Assessment applies and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners holding at least ten percent (10%) of the votes attributable to Parcels in such Neighborhood. This right to disapprove shall apply only to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the Owners within any Neighborhood disapprove any line item of a Neighborhood budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine a Neighborhood budget for any year, or if the budget proves inadequate for any reason, or if the use of a Parcel changes and affects the assessment obligation of the Owner of such Parcel, the Board may prepare a revised Neighborhood budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to the Neighborhood Assessor for, and each Owner within, the affected Neighborhood at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

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All amounts which the Association collects as Neighborhood Assessments shall be expended solely for the benefit of the Neighborhood for which they were collected and shall be accounted for separately from the Association's general funds.

8.4 Reserve Budget. The Board may, in its sole discretion, annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets, if any, within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general and Neighborhood budgets reserve amounts sufficient to meet the projected needs of the Association.

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8.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Parcels, if such Special Assessment is for Common Expenses, or against the Parcels within any Neighborhood if such Special Assessment is for Neighborhood Expenses.

Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes allocated to Parcels which will be subject to such Special Assessment and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after the date of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Parcel or Parcels as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Parcel(s) or Occupants thereof upon request of the Owner pursuant to a list of choices of special services which the Board may from time to time authorize to be offered to Owners and Occupants (which might include, without limitation, landscape maintenance, patrols or security services, pest control service, cable, digital or similar television services, internet or intranet service, fire protection, Utilities and special and promotional events coordination), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Common Area assigned to one (1) or more Parcels; and

(c) to cover all costs incurred in bringing the Parcel(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Parcel, their agents, contractors, employees, lessees, licensees, invitees, clients, customers or guests.

In addition, fines levied by the Association pursuant to Section 4.3 shall constitute Specific Assessments.

The Association may also levy a Specific Assessment against the Parcels within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules; provided however, the Board shall give prior written notice to the Neighborhood Assessor and the Owners of Units in the Neighborhood and an opportunity for the Owners within the Neighborhood to be heard before levying any such assessment.

8.7 Lien for Assessments. The Association shall have a lien against each Parcel to secure payment of assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of Tennessee law), late charges in such amount as the Board may establish (subject to the limitations of Tennessee law), costs of collection and reasonable attorneys fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record

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(meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Declarant, any Declarant-Related Entity, or the Association may bid for the Parcel at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Parcel. While a Parcel is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Parcel shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Parcel owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Parcel shall not affect the assessment lien or relieve such Parcel from the lien for any subsequent assessments. However, the sale or transfer of any Parcel pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Parcel who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Parcel due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Parcels subject to assessment under Section 8.8, including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Parcel after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

8.8 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Parcel on the date which the Parcel is conveyed to a Person other than the Declarant or a Declarant-Related Entity. The first annual General Assessment and Neighborhood Assessment, if any, levied on each Parcel shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Parcel and shall be due and payable on the date of conveyance.

8.9 Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail the Neighborhood Assessor or each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.10 Capitalization of Association. Upon acquisition of record title to a Parcel by the first Owner thereof other than the Declarant or any Declarant-Related Entity, a contribution shall be made by or on behalf of the purchaser of the Parcel to the working capital of the Association in an amount equal to _____ percent (____%) of the annual General Assessment for that Parcel for that year. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Parcel and may be used by the Association or by the Declarant as repayment of or future payment of operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

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8.11 Variation of Level of Assessments. Notwithstanding anything to the contrary contained in this Article 8 or elsewhere in this Declaration, in setting the levels or amounts of the various assessments provided for herein, and using the formula for determining same as provided in Exhibit "C",

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the Board may, but shall not be obligated to, consider the size and location of the Parcel, the level of maintenance provided by the Association and the particular usage of any Parcel, such as commercial, retail, service or residential (such designations being used as examples only). Such factors shall be considered a reasonable basis upon which to differentiate between assessments levied on various Parcels or Neighborhoods within the Properties or to exempt a Parcel from any or all assessments.

8.12 Payment of Assessments by Declarant and Declarant-Related Entities. Notwithstanding anything provided in this Declaration to the contrary, neither the Declarant (as a Member of the Association or as the Owner of any Parcel) nor any Declarant-Related Entity shall be responsible for the payment of any assessments with respect to any Parcel owned by Declarant or such Declarant-Related Entity unless such Parcel has been improved by the erection of Improvements thereon and a certificate of occupancy has been issued by the controlling governmental authority, in which event the Owner of such Parcel shall pay assessments in the manner set forth in this Article 8.

8.13 Transfer Fees. Excluding any sales or transfers between and among the Declarant and any Declarant-Related Entities and also excluding the first sale of each Parcel from the Declarant or a Declarant-Related Entity to an Owner other than the Declarant or a Declarant-Related Entity, but including all other sales of all Parcels, a transfer fee shall be paid by or on behalf of the purchaser of each Parcel equal to one-half of one percent (0.5%) of the total purchase price of such Parcel, which transfer fee shall be paid to the Association. This amount shall be collected and disbursed to the Association at the closing of the purchase and sale of each Parcel, except as provided above. Such funds may be used by the Association in its sole discretion and may include without limitation, the cost of park maintenance, community events and similar expenditures. The Association may, but shall not be obligated to, assign the right to collect transfer fees to a tax-exempt organization pursuant to Section 4.10. In the event of non-payment of such transfer fee, the amount due shall bear interest and shall be collectible as an assessment, as set forth in this Article 8. The Association may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds, or other such evidence.

ARTICLE 9: ARCHITECTURAL STANDARDS

9.1 General. No Improvements shall be placed, erected, installed, constructed or altered upon any Parcel except in compliance with this Article and with the prior written approval of the appropriate reviewing body under Section 9.2, in accordance with the application and approval requirements pursuant to Section 9.3.

All Improvements constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer acceptable to the Design Review Board, in its sole discretion. All plans and specifications shall be subject to review as provided herein.

This Article shall not apply to the activities of the Declarant or a Declarant-Related Entity, nor to Improvements to the Common Area by or on behalf of the Association. This Article may not be amended during the Development Period without the Declarant's written consent. BK M165 PG 274

9.2 Architectural Review. Responsibility for review of all applications for use, construction and modifications under this Article shall be handled by the reviewing bodies described below, the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the DRB. The reviewing bodies may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full

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prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals.

(a) Design Review Board. The DRB shall have exclusive jurisdiction over all construction on any portion of the Properties. Until one hundred percent (100%) of the Properties have been developed and conveyed to Owners other than Declarant or a Declarant-Related Entity and initial construction on each Parcel has been completed in accordance with all approved plans, and written consent granting occupancy to the owner is approved by the Declarant and/or other governing authority, the Declarant retains the right to appoint all member(s) of the DRB who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument on recordable form executed by Declarant. Upon expiration or surrender of such rights, the Board shall appoint the members of the DRB, who shall thereafter serve and be removed in the Board's discretion.

(b) Modifications Committee. The Board of Directors may establish one (1) or more Modifications Committees ("MC"). The members of any Modifications Committee shall be appointed by the Board and shall serve at the discretion of the Board. If established, a MC shall have jurisdiction over modifications, additions, or alterations of specific Parcels or Neighborhoods, including existing Improvements, after completion of initial construction on the Parcel. The DRB shall have the right to veto any action taken by any MC which the DRB determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the DRB. Any MC may be eliminated and its duties assumed by the DRB at any time in the discretion of the Board.

9.3 Guidelines and Procedures

(a) Design Guidelines. The Declarant may prepare and amend from time to time design and construction guidelines and application and review procedures for the Properties ("Design Guidelines"). Any Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one (1) portion of the Properties to another depending upon the location, unique characteristics, and intended uses. For example, by way of illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to or visible from any Lakes/Streams or any Private Amenity. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the reviewing bodies in considering applications hereunder, but shall not necessarily be the exclusive basis for decisions of the reviewing bodies.

Any MC may promulgate guidelines, procedures and standards governing its area of responsibility, subject to review and approval or disapproval by the DRB. Any architectural guidelines and standards adopted by the MC may be more restrictive than any Design Guidelines, but under no circumstances shall they be inconsistent with any Design Guidelines.

(b) Procedures. No activities within the scope of Section 9.1 shall commence on any portion of the Properties until an application for approval of the proposed work has been submitted to and approved by the DRB or the MC, as appropriate, and the specific use for such portion of the Properties has been approved by Declarant in accordance with Article 13. The DRB or the MC may require the submission of application forms and information as it deems necessary to consider any application and may require multiple stages of application and review for any use, construction or modification.

In the event that the DRB or MC fails to approve or to disapprove in writing any stage of an application within forty-five (45) Days after submission of all information and materials reasonably requested, the application shall be deemed approved unless an extension of such time period is agreed to by the reviewing body and the applicant.

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Notwithstanding the above, the DRB by resolution may exempt certain activities from the application and approval requirements of this Article, provided that such activities are undertaken in strict compliance with the requirements of such resolution. However, no approval whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the DRB pursuant to Section 9.5.

(c) Basis of Approval. In reviewing each submission, the reviewing body may consider (but shall not be limited to consideration of) the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, setbacks and finish grade elevation, among other things. Decisions of the reviewing bodies may be based solely on aesthetic considerations and shall be made by a Majority vote of all members of the reviewing body. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as members of the reviewing bodies change over time.

Review of the plans shall be based on general adequacy of site dimensions, conformity and harmony of the exterior design, location with neighboring structures and sites, relation of finished grades and elevations to neighboring sites, compatibility with first class commercial, retail, and mixed use developments, and conformity to both the specific and general restrictions and covenants set forth herein, and in any Design Guidelines. The reviewing body shall have the right to disapprove any submitted plans of any Parcel if such plans are not in conformity with the provisions of this Declaration or any Design Guidelines, or if the reviewing body, acting pursuant to Article 9 hereof, in its discretion determines that such plans are not in the best interest of the contemplated development of the Properties as a master planned mixed use development as described by this Declaration.

Approval by the DRB of any plans and specifications or the granting of a variance with respect to this Declaration, the Design Guidelines or any rules and regulations of the Association, shall not in any way be construed to set a precedent for approval, alter in any way this Declaration, the Design Guidelines or any rules and regulations of the Association or be deemed a waiver of the DRB's right, in its discretion, to disapprove similar plans and specifications, use of any Improvement, or any of the features or elements which are subsequently submitted for use in connection with any other Parcel.

(d) Commencement and Completion. All work shall be commenced and completed within such period as provided in the notice of approval; provided however, all work shall be completed within twelve (12) months after commencement of construction. The reviewing body may, in its sole discretion, grant an extension if commencement or completion is delayed due to causes beyond the reasonable control of the Owner. In the event construction of the work called for by the approved plans has not substantially commenced within the period set forth in the notice of approval, then the approval shall be deemed expired and no construction shall thereafter commence unless a written renewal is granted by the reviewing body.

(e) Easements and Common Area Dedications. As a prerequisite of approval of plans, the DRB shall have the power to require an Owner who has submitted plans to grant any reasonable Utility and drainage easements as may be required for the enjoyment and benefit of the Owners or the Association. Where possible, the DRB shall attempt to locate any such required easements along the perimeter of the Parcel, within existing or proposed rights-of-way, within other existing or proposed easements, or in such a manner as to not materially impair the proposed use of the Parcel.

(f) Architect, Builder and General Contractor Approval. In order to ensure that appropriate standards of construction are maintained throughout the Properties, all architects, builders and general contractors must be approved by the DRB prior to engaging in any construction activities within the Properties. The DRB shall implement a review process utilizing established criteria and requiring the submission of a written application for approval. Approval of any plans may be withheld until such

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time as the Owner's architect, builder or contractor has been approved by the DRB. Approval of an architect, builder or general contractor may be conditioned upon an agreement with the DRB to maintain certain insurance coverages required by the DRB, pay construction deposits to ensure completion of a project without damage to the Properties, and pay fees determined by the DRB, from time to time. Approval of architects, builders and contractors may not be construed as a recommendation of a specific architect, builder or contractor by the DRB or the Declarant, nor a guarantee or endorsement of the work of such architect, builder or contractor. The DRB shall maintain a list of general architects, builders or general contractors who are currently approved, and shall provide copies of the list to Owners upon request. Once approved (unless such approval is withdrawn by the DRB), an approved architect, builder or contractor shall not be required to re-submit to the approval process.

9.4 **No Waiver of Future Approvals.** Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.5 **Variance.** The DRB may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may be granted, however, only when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the DRB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing may not be considered a hardship warranting a variance.

9.6 **Limitation of Liability.** The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Neither the Declarant, the Association, the Board, the DRB nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Improvements are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the Declarant, the Association, the Board, the DRB, the MC, any committee, nor any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Parcel. In all matters, the Declarant, the Board, the DRB, the MC, and their members shall be defended and indemnified by the Association as provided in Section 4.6.

9.7 **Enforcement.** The Declarant, any member of the DRB, the MC, the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Parcel to inspect the same for the purpose of ascertaining whether any Improvement is in violation of this Article. Any Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written notice from the DRB or MC, Owners shall, at their own cost and expense, remove such structure or Improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the property as required, any authorized agent of Declarant, the DRB, the MC or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant, the DRB and the MC by any means of enforcement described in Section 4.3. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Parcel and collected as a Specific Assessment pursuant to Section 8.6.

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Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Parcel, unless approval to modify any application has been obtained. If any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Parcel and an opportunity to be heard in accordance with the By-Laws, to enter upon the Parcel and remove or complete any incomplete work and to assess all costs incurred against the Parcel and the Owner thereof as a Specific Assessment.

The DRB, the MC, the Association, the Declarant, and the members, officers or directors of the foregoing shall not be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article may be excluded by the DRB from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the DRB and the MC.

ARTICLE 10: USE RESTRICTIONS

10.1 **General.** This Article sets out certain use restrictions which must be complied with by all Owners and Occupants of any Parcel. Declarant has established the Properties as a mixed use development with the intent that the development be comprised of a residential area with complimentary commercial components located within the Properties. The Properties shall be used only for residential, office, retail, and commercial purposes consistent with the Zoning Ordinance, this Declaration and any Supplemental Declarations.

10.2 **Plan of Development; Applicability; Effect.** Declarant has established a general plan of development for the Properties as a master planned mixed use development in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned mixed use development and to regulate and control the Area of Common Responsibility. The Properties are subject to the Master Plan, the land development, architectural, and design provisions described in Article 9, the other provisions of this Declaration governing individual conduct and uses of and actions upon the Properties, any applicable Supplemental Declaration, and the rules promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the Properties, and which are enforceable by the Association as set forth in this Declaration.

The Properties shall be used only for such purposes permitted by the Zoning Ordinance and specifically approved by the Declarant or its designee, consistent with this Declaration and any Supplemental Declaration. As set forth in Section 13.5, Declarant retains the right, in its discretion, during the Development Period, to specifically determine, limit and otherwise review and designate the uses permitted for any Parcel or group of Parcels to one or more of the uses permitted by the Zoning Ordinance. Such specific permitted use designations may be amended only as provided in Section 13.5. The Declarant's rights with respect to approval, limitation, and designation of specific uses for any of the Properties shall be fully assignable or delegable by Declarant at any time and from time to time. During the Development Period, Declarant may further, in its discretion, establish such rules, regulations and procedures for initial and continuing review and approval of the use or uses for all Parcels on a case by case basis.

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All provisions of this Declaration and any rules shall apply to all Owners, Occupants, employees, lessees, clients, customers, guests and invitees of any Parcel. Any lease on any Parcel shall provide that the lessee and all Occupants of the leased Parcel shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

10.3 **Procedures for Review and Enforcement of Parcel Specific Uses.** In order to carry out the general plan of development, create enhancements to the Properties and maintain the values thereof, Declarant has been given and retains in its discretion, as provided above in Section 10.1 and in Article 13 and throughout this Declaration, the specific right and authority to limit the specific use or uses of any portion of the Properties, including any one Parcel or portions thereof or group of Parcels, or negatively restrict any Parcel or portions thereof or group of Parcels from being used for a certain use or uses. Accordingly, no activities within the scope of Section 9.1 shall commence on any portion of the Properties until an application for approval of the proposed use or uses for the specific Parcel or Parcels or other portion of the Properties in question, has been submitted to and approved in writing by Declarant or its designee. Thereafter, the use for all or any portion of a specific Parcel or group of Parcels shall not be changed from that last approved by Declarant in accordance with Article 13 unless and until an application for such change in use has been submitted to and approved in writing by Declarant or its designee. Declarant or its designee may require the submission of application forms and such information as it deems necessary to consider any application for approval of an initial use and/or for the approval of a change in use from one previously approved. Notwithstanding the foregoing, in the event the Declarant fails to approve or to disapprove in writing an application for initial use or for a change of use within Sixty (60) Days after submission of all requested information and materials, the application and the specific use for which approval is being sought shall be deemed approved unless an extension of such time period is agreed to by Declarant and the applicant. All such review and approval of the use or uses for any portion of the Properties shall be done and made in Declarant's sole and absolute discretion and an approval of a specific use for a Parcel or portion thereof, or a group of Parcels shall not be deemed an approval for any other Parcels nor shall it constitute a waiver of the right to withhold approval as to any similar proposals for use of a specific Parcel or of other Parcels within the general area. The failure of an Owner to submit and obtain approval for the specific use to be carried out on or within its Parcel (whether initial uses or change in use), or to comply with such use after approval thereof, shall be deemed a violation of this Declaration and shall be subject to enforcement by Declarant and/or the Association as provided in this Declaration and in the By-Laws. Declarant may, without limitation, designate all or certain of its rights and authority under this Section to the DRB.

All Owners and Occupants of Parcels and purchasers are given notice that the specific operational use or uses of each Parcel is limited by the use review and approval rights of Declarant. Each Owner, by acceptance of a deed or entering into a contract for the purchase of a Parcel, acknowledges the rights of Declarant with respect to review and approval of the specific uses of the Properties, agrees to abide thereby, and further acknowledges and agrees that the specific use and enjoyment and marketability of its Parcel can be affected.

10.4 **Obnoxious or Offensive Activity.** No obnoxious or offensive activity shall be allowed on the Properties, nor shall any use or practice be allowed which is a source of annoyance, embarrassment or discomfort to Owners or their tenants or invitees, or which interferes with the peaceful possession and proper use and enjoyment of the Properties, nor shall any improper, unsightly, offensive or unlawful use be made of any Parcel or of the Common Area. All laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Properties shall be observed. Restricted and prohibited activities include without limitation, the following terms and conditions:

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(a) The use, enjoyment and occupancy of the Properties shall be in such a manner so as not to cause or produce any of the following effects discernible outside the building located thereon, or

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affect the adjoining property or any portion by its volume, duration, pounding beat, frequency or shrillness; smoke, dust, or dirt; unusual fire or explosive hazards; or vibration or light.

(b) Loading, service and refuse areas shall be constructed in accordance with the plans approved by the DRB. No accumulation of rubbish, trash, or garbage shall be made except between regular garbage pick ups, and then only in approved containers and screened from view from streets and other Parcels.

(c) No use of any radio, loudspeaker, horn, whistle, bell, or other sound device shall be audible to Occupants of other Parcels, except alarm devices used exclusively for security purposes.

(d) Discharge of firearms, firecrackers and other fireworks is prohibited except under a license or permit issued for that purpose. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board shall have no obligation to take action to prevent or stop such discharge.

(e) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as to potentially diminish or destroy the enjoyment of the Properties are prohibited.

(f) Structures, equipment or other items on a Parcel which have become rusty, dilapidated or otherwise fallen into disrepair are prohibited and shall be removed or repaired by the Owner of the Parcel at the request of the Board. If an Owner fails to honor such request, the Board may remove the offending structure, and charge the costs of removal thereof to the Owner as a Specific Assessment.

(g) Funeral parlors, cemeteries, junk yards, stockyards, flea markets, second-hand stores, establishments selling or exchanging obscene or pornographic materials or paraphernalia related to illegal drugs, or in the provision of entertainment featuring topless or nude performers are prohibited.

10.5 **Fuel Storage and Dispensing.** On-site storage and dispensing of gasoline, heating, or other fuels is prohibited, except that a reasonable amount of fuel may be stored on each Parcel for emergency purposes and for the operation of lawn mowers and similar tools or equipment. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to fuels stored and dispensed incident to the retail operation of a gasoline service station or convenience store dispensing fuel for primarily passenger vehicles and household uses, nor to any underground fuel tank approved by the DRB, nor to any underground or above-ground fuel tank actively used for storage of fuels used incident to cooking operations in connection with the operation of a restaurant or other food service facility approved by the DRB, and provided in either case that operation and installation of such facilities shall be according to applicable laws, ordinances, and regulations, including without limitation zoning ordinances.

10.6 **Animals and Pets.**

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(a) Raising, breeding or keeping of animals, livestock, or poultry of any kind is restricted within the Properties to the keeping of a reasonable number of dogs, cats, or other usual and common household pets. The Board, in its sole discretion, may make further restrictions regarding pets, including without limitation restrictions on the number, size, and types of pets permitted within Parcels.

(b) Pets shall be kept on a leash or otherwise confined in a manner acceptable to the Board, and shall not be permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the Owners or Occupants of Parcels and their employees, lessees, invitees, clients, customers and guests. Pets shall be registered, licensed and inoculated as required by law. The owners of the pet shall be responsible for all of the pet's actions. Pet waste shall be promptly removed and disposed of in proper receptacles. If, in the

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sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive to wildlife, the animal shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.3 of the Declaration.

(c) Nothing herein contained shall interfere with any provision under the Americans with Disabilities Act or any similar applicable federal, state or local law, ordinance or regulation.

(d) A reasonable number of dogs, cats, and other common household pets may be permitted in a Parcel: (i) if related to the approved specific use of the Parcel. (*i.e.* a grooming service or a retail store selling pet supplies may keep pets within such Parcels); and (ii) in conjunction with the conduct of business in a Parcel, such as the use of animals to provide security for a Parcel or for the temporary keeping of pets within a Parcel by the Owner or Occupant of such Parcel.

10.7 Common Area, Plazas, Sidewalks, and Bike and Pedestrian Pathways/Trails.

(a) Owners and Occupants of Parcels, as well as their employees, lessees, invitees, clients, customers, guests, and pets shall refrain from any actions which deter from the enjoyment by other Owners of areas within the Properties designated as Common Area, pedestrian plazas, sidewalks, bike and pedestrian pathways/trails, and streets, lanes, and alleys. The Owners or Occupants of Parcels shall be solely responsible for the actions of their employees, lessees, invitees, clients, customers, guests and pets. Prohibited activities shall include without limitation, activities which obstruct the Common Area and/or other greenspace, maintenance of dogs or other pets under conditions which interfere with the use of the specified areas by other Owners, their tenants and invitees, playing of loud radios or musical instruments, holding of large gatherings without advance approval of the Board, loitering, erecting tents, stages or other temporary structures, installing vending machines, and soliciting. Such activities shall only be permitted for events approved in advance by the Board and otherwise permitted under this Declaration. The Board may promulgate other rules and restrictions for the use of these areas.

(b) Special events held within the Properties by any Person other than the Declarant or a Declarant-Related Entity, including without limitation educational, cultural, entertainment, promotional, sporting or social events expected to draw increased vehicle, bicycle and pedestrian traffic to the Common Area, pedestrian plazas, sidewalks, and bike and pedestrian pathways/trails within the Properties shall be approved in advance by the Board. Such approval shall be in the sole discretion of the Board.

10.8 Lakes/Streams and Other Water Bodies. Lakes, Streams and Other Water Bodies (Water Body) shall be used only in accordance with the Use Restrictions promulgated by the Declarant, the Association and or any other governmental authority, including but not limited to the Tennessee Department of Environment and Conservation (TDEC). No Person may use any Water Body in any fashion for irrigation of a Parcel. Notwithstanding the foregoing, the Association shall have the right to use the equipment it deems necessary at the times and places it deems necessary to comply with its maintenance responsibilities. The Association shall not be responsible for any loss, damage, or injury to any Person or property arising out of the authorized or unauthorized use of any Water Body. In addition, the Association shall not be responsible for maintaining, increasing or decreasing the water level within any Water Body or removing vegetation from any Water Body. No docks, piers, or gazebos shall be constructed, attached or floated upon or adjacent to any Water Body.

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10.9 Parking and Vehicles.

(a) Unless otherwise authorized by the Declarant, parking of the following vehicles within the Properties is restricted: construction vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other water craft, trailers, stored vehicles or inoperable vehicles. The foregoing vehicles may be parked only in enclosed garages or other areas as may be designated by the

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Board and approved in accordance with Article 9 of the Declaration. Construction vehicles and equipment shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary for construction within a Parcel or the Common Area. In the sole discretion of the Board, limitations may be placed on the parking areas, times for parking and points of entry for construction and commercial vehicles.

(b) Operation of motorized vehicles on pedestrian ways, sidewalks and plazas maintained by the Association is prohibited unless specifically permitted in the discretion of the Board. Any use of pedestrian ways, sidewalks and plazas maintained by the Association for motorized vehicles shall be subject to local laws and ordinances and any restrictions established by the Board in permitting such use.

(c) Nothing herein contained shall interfere with any provision under the Americans with Disabilities Act or any similar applicable federal, state or local law, ordinance or regulation.

10.10 **Environmental Protection.** Any activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Properties or adjoining buffer zones or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution are prohibited. Restricted and prohibited activities include without limitation the following:

(a) Dumping of grass clippings, leaves or other debris, chemicals, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any buffer zone, drainage or irrigation ditch, swale or elsewhere within the Properties or adjoining areas, except that fertilizers may be applied to landscaping on Parcels provided care is taken to minimize runoff.

(b) Obstructing, rechanneling or any other interfering with drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant, any Declarant-Related Entity and the Association shall have such right, provided that the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Parcel without the Owner's consent.

(c) Installing of sprinkler or irrigation systems or wells of any type which draw upon water from Lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties, except that Declarant, any Declarant-Related Entity and the Association shall have the right to draw water from such sources.

Living trees shall be removed from the Properties only in conformance with plans approved in accordance with Article 9.

All areas designated on a recorded plat as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. Prior to any alteration of a Parcel, the Owner shall determine if any portion thereof meets the requirements for designation as a regulatory wetland. Notwithstanding anything contained in this Section, the Declarant, any Declarant-Related Entity, the Association, and the successors, assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

10.11 **Construction Activities.** No construction, erection, or placement of any structure, permanently or temporarily, on the outside portions of the Parcel, whether such portion is improved or unimproved is permitted, except in strict compliance with the provisions of Article 9 of the Declaration. The following restrictions shall also apply:

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(a) After commencement of construction of any Improvements in the Properties, the

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Owner shall diligently prosecute the work thereon, such that the Improvements shall not remain in a partly finished condition any longer than reasonably and normally necessary for completion thereof.

(b) The Owner of the Parcel on which Improvements are being constructed shall at all times keep streets and parking contiguous to the Parcel free from excess dirt, mud, garbage, trash or other debris as may be occasioned by construction of the Improvements.

(c) Rocks and trees removed during construction of Improvements shall be disposed of in strict conformance with plans approved in accordance with Article 9.

(d) Storage of construction materials and equipment shall strictly conform to plans approved in accordance with Article 9. The foregoing materials and equipment shall not be permitted within any natural barriers established prior to construction.

10.12 **Signs.** No signs, advertisements, billboards, solicitation or advertising structures or any kind shall be erected, modified or maintained on a Parcel or within the Properties unless prior written approval of the DRB is obtained. In addition, with respect to any Parcels that are restricted to, intended for, or used primarily for residential purposes, no "for sale" or "for lease" signs shall be permitted on any portion of such Parcels, including within any residences located thereon, if such sign would be visible from the exterior of such Parcel as determined in the DRB's sole discretion. The DRB may restrict the size, materials, color, lettering, illumination and placement of all signs. The restrictions of this Section shall not apply to signs erected or constructed by or on behalf of the Declarant or a Declarant-Related Entity.

10.13 **Fences or Walls.** No fences or walls shall be erected except with prior written DRB approval.

10.14 **Lighting.** Exterior lighting must be approved by the DRB. Seasonal decorative lights may be used only pursuant to rules and regulations established by the Board from time to time.

10.15 **Air-Conditioning Equipment.** No air conditioning equipment which is visible on the exterior of any Improvement shall be permitted in the Properties unless constructed in accordance with plans approved by the DRB. Approval shall be based on adequacy of screening and/or landscaping of the equipment.

10.16 **Temporary Structures.** Except as specifically approved in writing in advance by the DRB, no temporary buildings (including construction trailers) shall be erected or placed on the Properties, except by the Declarant who in its sole discretion may utilize temporary structures for the express purposes of marketing, selling and constructing initial phases of the development.

10.17 **Antennas.** Antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind shall be constructed only after written approval of the DRB. Notwithstanding the foregoing, the DRB shall regulate the design and placement of antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

10.18 **Subdivision.** Subdivision of a Parcel into two (2) or more Parcels, or changing the boundary lines of any Parcel after a plat including such Parcel has been approved and filed in the Public Records is prohibited, except with the written consent of the Declarant during the Development Period and the Board thereafter.

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10.19 **Alleys.** Owners of Parcels located adjacent to alleys and other permitted users of any alley shall be obligated to refrain from any actions which would deter from or interfere with the use and

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enjoyment of the alley by other authorized users of the alley. Prohibited activities shall include, without limitation, obstruction of any of the alleys. For the purposes of this Section, the term "alley" shall refer to a thoroughfare providing access to, through or within Parcels which may be more particularly described on a recorded subdivision plat for such Parcels.

10.20 **Occupants Bound.** All provisions of the Declaration, By-Laws and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against the Owners shall also apply to all occupants even though Occupants are not specifically mentioned.

10.21 **Rules and Regulations.** In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Members holding a Majority of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant.

ARTICLE 11: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, any Declarant-Related Entity, the Association, the Members, and the Owners, and their successors-in-title.

11.1 **Easements of Encroachment.** Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Parcels and between each Parcel and any adjacent Common Area due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than 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, the Person claiming the benefit of such easement.

11.2 **Easements for Utilities, Etc.**

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself and any Declarant-Related Entity during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any Utility company) upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, alley ways, irrigation, and drainage systems; street lights and signage; and all Utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and Utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

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Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, and natural gas supplier the easements set forth herein across the Properties for

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ingress, egress, installation, reading, replacing, repairing, and maintaining Utility lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."

(c) Any damage to a Parcel resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Parcel, nor shall it unreasonably interfere with the use of any Parcel, and except in an emergency, entry onto any Parcel shall be made only after reasonable notice to the Owner or Occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3 **Easement for Slope Control, Drainage and Waterway Maintenance.** Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself, and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Parcel for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Parcel which are or may be subject to soil erosion;

(b) drainage of natural or man-made water flow and water areas from any portion of the Properties;

(c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Parcel or Common Area; and

(d) installing such pipes, lines, conduits or other equipment as may be necessary for slope control and drainage maintenance of any portion of the Properties.

11.4 **Easements to Serve Additional Property.** The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing Utilities and Improvements on such property. In addition, Declarant reserves the non-exclusive right and power to grant such specific easements and licenses as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."

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11.5 **Maintenance, Construction, Utility and Drainage Easements.** The Owners of all Parcels recognize and agree that temporary construction and permanent and perpetual maintenance easements and all rights of access reasonably necessary to permit construction and maintenance of the Common Area, including reasonable permanent easements to permit installation and maintenance of Utilities, roads, walkways and storm water drainage on the Properties are hereby granted to and retained by Declarant for the benefit of Declarant and of the Association and their respective Mortgagees,

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employees, independent contractors, agents and assigns. Such easements must be granted and conveyed hereafter by each Owner to Declarant and the Association for the benefit of Declarant and of the Association and their respective Mortgagees, employees, independent contractors, agents and assigns. Each Owner, by taking title to its respective Parcel, hereby grants and conveys and shall be deemed to have consented and agreed to hereafter designate, grant and convey such easements when requested to do so by Declarant or the Association. Each Owner, by taking title to its respective Parcel, shall also be deemed to have agreed to obtain from all appropriate parties, including its Mortgagees and trustees under deeds to secure debt, the written subordination of any and all Mortgages, deeds to secure debt, security interests and all other liens that encumber or in any way affect its respective Parcel to such easements and to all other easements, rights-of-way and rights of ingress, egress, access and passage now set forth in or otherwise provided for in or contemplated by this Article. Such written subordination instruments shall be provided promptly and without delay to Declarant and the Association when requested by Declarant or the Association. Each Mortgagee, noteholder under a deed to secure debt, trustee under a deed to secure debt and other holders of any security interest in any Parcel by accepting a security interest in or legal or equitable title to a Parcel, shall be deemed to have consented to and agreed that its security interest or legal or equitable title is subject to said easements and agrees to execute any instrument reasonably required to subordinate its debt and security instruments to such easements, rights-of-way and rights of ingress, egress, access and passage subject to the same not materially adversely affecting the Parcel serving as the security for the obligations owed to such Mortgagee or noteholder. Such easements will contain terms and conditions reasonably requested by Declarant or the Association, as the case may be, but such easements will not unreasonably interfere with the development, use and occupancy of any Parcel or unreasonably affect access to, or operation of, any such Parcel. All temporary construction easements, and temporary access rights in connection therewith, of Declarant shall terminate automatically when construction of the Common Area for which such easement is granted or retained is completed, but the permanent and perpetual maintenance easements, and access rights in connection therewith, of Declarant and the Association shall continue in full force and effect except as hereinafter provided. Prior to the Declarant's or the Association's exercise of any easement rights created by this Section, a written instrument defining the location of the respective easement shall be approved by the appropriate governmental entity.

11.6 **Roadside Access Easements.** There is hereby reserved to Declarant, the Association and the general public an easement for access, adjacent and parallel to all public road rights-of-way within the Properties, extending from the curb to the far side of any sidewalk or jogging or bicycle path running more or less parallel to the curb, for the purpose of using such sidewalk or path. There is also hereby reserved to Declarant, the Association, and the designees of each, a right to go upon, over and across all property adjacent to public road rights-of-way within the Properties to maintain, repair, and replace street furniture (e.g., park benches), sidewalks and paths, and traffic and directional signs.

11.7 **Easement for Entry.** Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association to enter upon any Parcel for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Parcel shall be only during reasonable hours and after notice to and permission from the Owner. This easement includes the right to enter any Parcel to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

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11.8 Easements for Maintenance and Enforcement.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association to enter all portions of the Properties, including each Parcel, to (a) perform its maintenance responsibilities under Article 5, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Parcel shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

(b) The Association also may enter a Parcel to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, may be assessed against the violator as a Specific Assessment.

(c) In addition, Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the City of Sweetwater, Tennessee or its duly authorized designee to enter all portions of the Properties, including each Parcel, to perform various maintenance tasks in accordance with Section 5.1(e). Except in emergencies, entry onto a Parcel shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the City of Sweetwater, Tennessee at its expense.

(d) Entry under this Section shall not constitute a trespass.

11.9 Public Park Easements. There is hereby reserved to Declarant and the Association an easement for access to all public parks adjacent to or surrounded by the Properties for the purpose of maintaining those areas in accordance with the Community-Wide Standard.

11.10 Landscape Easements and Tree Preservation. There are hereby reserved to Declarant during the Development Period, the Association and the designees of each, non-exclusive easements for access, installation, pruning and other maintenance, removal and replacement of street trees and landscaping over those portions of the Properties lying adjacent to all roadways and consisting of a strip of land as shown on the plat of the Properties. This easement shall run the entire length of, and on both sides of, all roadways ("Landscape Easement") and over such other portions of the Properties as are designated "Landscape and Access Easement" on the recorded plats of the Properties. Such easement shall include the right to disturb existing landscaping within the Landscape Easement, to dig holes and to temporarily pile dirt and plant material upon the Landscape Easement, provided the area is restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of the activities authorized hereunder. Nothing herein shall obligate the Declarant or the Association to undertake any of the activities which such easement authorizes. Except as may otherwise be provided in any written agreement executed by the Declarant, the Declarant may, but shall not be obligated to, install street trees and landscaping within such public rights-of-way and/or these Landscape Easements at its option, at such times and in such numbers and locations as it may deem appropriate in its sole discretion. These Landscape Easement areas shall not be disturbed by any Owner without prior approval in accordance with Article 9.

11.11 Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Parcel, and any Improvement which contributes to the lateral support of another portion of the Common Area or of another Parcel. Each Parcel shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

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11.12 **Easement for Special Events.** Declarant reserves, creates, establishes, promulgates and declares for itself, any Declarant-Related Entity, their successors, assigns and designees a perpetual, non-exclusive reciprocal, appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct educational, cultural, entertainment, promotional or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Parcel, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the Occupants of its Parcel to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.13 **Liability for Use of Easements.** No Owner shall have a claim or cause of action against the Declarant, any Declarant-Related Entity, the Association, or their successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

ARTICLE 12: MORTGAGEE PROVISIONS

12.1 **No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Parcel in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.2 **Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Parcel.

12.3 **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE 13: DECLARANT'S RIGHTS

13.1 **Transfer or Assignment.** Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association, to a Declarant-Related Entity, or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

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13.2 **Development and Sales.** The Declarant, any Declarant-Related Entity and others authorized by Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Parcels, such as sales activities, tournaments, charitable events, and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7)

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consecutive Days. The Declarant, all Declarant-Related Entities and others authorized by the Declarant shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant, any Declarant-Related Entity and others authorized by Declarant may establish within the Properties, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Parcels, including, but not limited to, business offices, signs, model units, tents, sales offices, sales centers and related parking facilities. During the Development Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant, any Declarant-Related Entity and others authorized by the Declarant shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

13.3 **Improvements to Common Areas.** The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such Improvements to the Common Area as it deems appropriate in its sole discretion.

13.4 **Additional Covenants.** No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.4, may conflict with the Declaration, By-Laws or Articles.

13.5 **Limitations of Use.** During the Development Period, the Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to limit the use of any portion of the Properties, including any one Parcel or group of Parcels, to one or more, but less than all, of the permitted uses under the Zoning Ordinance. By way of example only, the Declarant may limit the use of certain Parcels or Neighborhoods to single-family residential use. In the alternative, the use of a Parcel or Neighborhood may be limited to a nonresidential use permitted under the Master Plan such as, by way of example only, a specific non-food service retail use, or the use of certain Parcels may be restricted against a use already being conducted by an Owner of a Parcel within Willow Creek.

The limitations of use imposed by the Declarant may not be changed without the written consent of the Declarant during the Development Period. Thereafter, or at such time as the Declarant assigns it rights in this regard to the Association, any change in the limitations on use shall require the consent of the Board and the Owner(s) of the affected Parcel or Parcels and shall be set forth in a written instrument recorded in the Public Records. Declarant shall have the further right to establish such rules, regulations and procedures for initial and continuing review, approval and enforcement of the use or uses of and for all Parcels as provided in Article 10. Any change on the limitations on use of a Parcel and the resulting change of the actual use of such Parcel may impact the assessment and voting allocations for the affected Parcel as determined in accordance with the formula set forth in Exhibit "C". The Board may, but shall not be obligated to, revise the Association's budgets to reflect such change and send the revised budgets to the Neighborhood Assessors or Owners in accordance with Article 8. **EK M165 PG 289**

13.6 **Right of Declarant to Disapprove Actions.** Declarant shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole

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judgment of the Declarant, would tend to impair rights of the Declarant under the Governing Documents, or interfere with development of or construction on any portion of the Properties, or diminish the level of services being provided by the Association.

(a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Declarant has registered with the secretary of the Association, which notice complies with the By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at such meeting. The Declarant may waive its right to receive notice in the same manner as provided in the By-Laws; and

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within ten (10) Days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) Days following receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Declarant exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

13.7 Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines shall be effective without prior notice to and the written consent of the Declarant, during the Development Period. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate at such time as neither the Declarant nor any Declarant-Related Entity owns any property which is subject to this Declaration, any Additional Property or any Private Amenity nor has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1.

ARTICLE 14: GENERAL PROVISIONS

14.1 Duration.

(a) Except as otherwise limited by Tennessee law, this Declaration shall have perpetual duration. If Tennessee law limits the period during which covenants may run with the land, then this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue forever.

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(b) Unless otherwise provided by Tennessee law, in which case such law shall control, this Declaration may not be terminated within thirty (30) years of the date of recording without the consent of all Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least ninety percent (90%) of the total number of Parcels within the Properties and by the Declarant, during the Development Period, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

14.2 Amendment.

(a) By Declarant. During the Development Period, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration at any time and from time to time:

for the purpose of curing any ambiguity or any inconsistency among the provisions contained herein;

to release any Parcel from any part of the covenants and restrictions contained herein which have been violated if the Declarant, in its sole judgment, determines such violation to be a minor or insubstantial violation;

if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Parcels; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, to make, purchase, insure or guarantee Mortgage loans on the Parcels; (d) to enable any reputable private insurance company to insure Mortgage loans on the Parcels; or (e) to satisfy the requirements of any local, state or federal governmental agency; and

any other purpose.

The foregoing amendments may be made without the joinder or approval of any Owner, Mortgagee, or the Association.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Members to correct scrivener's errors and other mistakes of fact, provided that amendments under this provision have no material adverse effect on the rights of the Owners. During the Development Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant, any Declarant-Related Entity, or the Class "B" Member without the written consent of the Declarant, the Declarant-Related Entity, the Class "B" Member, or the assignee of such right or privilege.

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If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

14.3 **Severability.** Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4 **Litigation.** Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Members holding seventy-five percent (75%) of the Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to property taxation; (d) counter-claims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.5 **Non-Merger.** Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

14.6 **Grants.** The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted in this Declaration.

14.7 **Cumulative Effect; Conflict.** The provisions of this Declaration shall be cumulative with any additional recorded covenants, restrictions, and declarations applicable to any Neighborhood or Parcel, and the Association may, but shall not be required to, enforce such additional covenants, restrictions, and declarations applicable to any Neighborhood or Parcel; provided however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and rules of the Association shall prevail over those of any Neighborhood or Parcel. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional covenants or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

14.8 **Use of the "Willow Creek" Name and Logo.** No Person shall use the words "Willow Creek" or the logo in any printed or promotional material without the Declarant's prior written consent.

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However, Owners may use the words "Willow Creek" in printed or promotional matter where such terms are used solely to specify that particular property is located within Willow Creek and the Association and any other community association located in Willow Creek shall be entitled to use the words "Willow Creek" in its name, provided that the name chosen by the Association or any other community association located in Willow Creek is permitted to be registered by the Secretary of State of Tennessee or such other controlling entity.

14.9 **Compliance.** Every Owner and Occupant of any Parcel shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

14.10 **Notice of Sale or Transfer of Title.** Subject and in addition to the requirements and provisions of Article 14, any Owner desiring to sell or otherwise transfer title to its Parcel shall give the Board at least seven (7) Days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. After the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Parcel, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.11 **Exhibits.** Exhibits "A", "B", and "C" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2.

[SIGNATURES ON FOLLOWING PAGE]

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Willow Creek Master Declaration

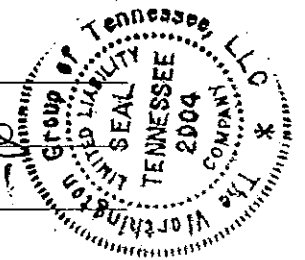
IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 17th day of August, 2005

The Worthington Group Of Tennessee, LLC, a Tennessee limited liability company

By: William L. Yates

Signature: [Handwritten Signature]

Title: President



[SEAL]

STATE OF TENNESSEE

COUNTY OF Monroe

Before me, the undersigned authority, a Notary Public in and for said State and County, personally appeared William L. Yates, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the President of The Worthington Group Of Tennessee, LLC, the within named Declarant, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited partnership by himself as such President.

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Witness my hand and seal, at office this 17th day of August, 2005.

Victoria Lee Fry
Notary Public

My commission expires July 23, 2008.



EXHIBIT "A"

Land Initially Submitted

EXHIBIT A. MASTER DEEDS RELATION WILLOWCREEK

**WILLOWCREEK SUBDIVISION
LEGAL DESCRIPTION
SITUATED IN THE CITY OF
SWEETWATER, TENNESSEE**

A CERTAIN PARCEL OF LAND LYING AND BEING IN THE FIRST CIVIL DISTRICT OF MONROE COUNTY, TENNESSEE, LYING NORTH OF NEW HIGHWAY 68 AND WEST OF HIGH STREET. THIS PARCEL OF LAND ALSO BEING THE SAME LAND NOW OWNED BY THE WORTHINGTON GROUP OF TENNESSEE, AND DESIGNATED AS THE WILLOWCREEK SUBDIVISION, (PLAT TO BE RECORDED). SAID DEEDS FOR THESE PARCELS ARE AS RECORDED IN THE PUBLIC RECORDS OF MONROE COUNTY TENNESSEE, AND THEIR OVERALL BOUNDARY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE PARCEL HEREIN CONVEYED, SAID CORNER BEING THE NORTHWEST CORNER OF LANDS OF SWEETWATER HIGH SCHOOL (WB 244 PAGE 267) THENCE WITH THE LANDS OF SWEETWATER HIGH SCHOOL S10°24'26"E, A DISTANCE OF 703.86 FEET TO THE SOUTHWEST CORNER OF LANDS OF SWEETWATER HIGH SCHOOL; THENCE S75°45'19"E, ALONG THE SOUTH LINE OF LANDS OF SWEETWATER HIGH SCHOOL, A DISTANCE OF 64.07 FEET TO A POINT ON THE LINE OF SAID HIGH SCHOOL AND THE PEGGY BARNES TRACT; THENCE LEAVING THE SOUTH LINE OF LANDS OF SWEETWATER HIGH SCHOOL AND RUNNING THROUGH THE SAID ORIGINAL BARNES TRACT THE FOLLOWING THREE COURSES; S41°50'49"W, A DISTANCE OF 27.55 FEET; THENCE S24°39'44"W, A DISTANCE OF 173.11 FEET; THENCE S11°02'10"W, A DISTANCE OF 261.02 FEET TO A POINT ON THE ORIGINAL PEGGY BARNES TRACT; THENCE WITH SAID TRACT THE FOLLOWING 4 COURSES, NORTH 89°33'19" EAST, A DISTANCE OF 379.21 FEET; THENCE NORTH 88°58'15" EAST, A DISTANCE OF 179.62 FEET; THENCE SOUTH 89°45'24" EAST, A DISTANCE OF 118.44 FEET; THENCE SOUTH 89°17'29" EAST, A DISTANCE OF 423.49 FEET TO A POINT OF THE WESTERLY RIGHT OF WAY OF HIGH STREET (50' IN WIDTH); THENCE WITH SAID RIGHT OF WAY, SOUTH 39°02'20" WEST, A DISTANCE OF 845.13 FEET; THENCE SOUTH 38°19'27" WEST, A DISTANCE OF 48.51 FEET; THENCE SOUTH 36°17'37" WEST, A DISTANCE OF 67.61 FEET; THENCE SOUTH 32°24'38" WEST, A DISTANCE OF 63.65 FEET TO A POINT. THENCE LEAVING HIGH STREET RIGHT OF WAY AND RUNNING SOUTH 89°29'38" WEST, A DISTANCE OF 397.90 FEET; THENCE SOUTH 89°50'11" WEST, A DISTANCE OF 672.11 FEET; THENCE SOUTH 89°45'59" WEST, A DISTANCE OF 76.64 FEET; THENCE SOUTH 89°36'48" WEST, A DISTANCE OF 300.00 FEET; THENCE SOUTH 89°41'54" WEST, A DISTANCE OF 32.98 FEET; THENCE SOUTH 89°48'50" WEST, A DISTANCE OF 271.75 FEET; THENCE NORTH 58°58'07" WEST, A DISTANCE OF 207.95 FEET TO A POINT ON THE RIGHT OF WAY OF THE PROPOSED WILLOWCREEK BOULEVARD; THENCE WITH SAID RIGHT OF WAY, SOUTH 30°59'10" WEST, A DISTANCE OF 196.28 FEET TO A POINT AT THE INTERSECTION OF WILLOWCREEK BOULEVARD RIGHT OF WAY AND STATE ROAD 68 RIGHT OF WAY; THENCE WITH SAID STATE ROAD 68 RIGHT OF WAY THE FOLLOWING 3 COURSES, NORTH 58°41'12" WEST, A DISTANCE OF 75.00 FEET; THENCE NORTH 59°10'27" WEST, A DISTANCE OF 43.60 FEET; THENCE NORTH 59°54'17" WEST, A DISTANCE OF 83.67 FEET TO A COMMON CORNER WITH THE SWEETWATER HOUSING AUTHORITY PARCEL OF LAND; THENCE LEAVING SAID RIGHT OF WAY AND WITH THE LANDS OF THE SWEETWATER HOUSING AUTHORITY AND REX BALL, THE FOLLOWING 4 COURSES, NORTH 00°51'47" WEST, A DISTANCE OF 232.55 FEET; THENCE NORTH 00°03'36" WEST, A DISTANCE OF 468.62 FEET; THENCE NORTH 00°19'09" EAST, A DISTANCE OF 197.62 FEET; THENCE NORTH 00°31'11" WEST, A

DISTANCE OF 928.79 FEET; THENCE LEAVING THE LANDS OF REX BALL AND WITH THE LANDS OF GALLION (DB 163 PAGE 207) NORTH 89°25'27" EAST, A DISTANCE OF 699.93 FEET; THENCE SOUTH 89°30'11" EAST, A DISTANCE OF 602.78 FEET; THENCE NORTH 03°56'54" EAST, A DISTANCE OF 84.13 FEET TO A POINT ON A COMMON LINE WITH THE SWEETWATER HOUSING AUTHORITY (DB 88 PAGE 255) THENCE WITH SAID LINE SOUTH 89°40'15" EAST, A DISTANCE OF 394.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 90.765 ACRES, MORE OR LESS.

Roger Harrah LS 2039

President

Leading Edge Land Services, Tennessee

361 Mallory Station Road

Suite 108

Franklin, Tennessee 37064

office 615 778-0863

fax 615 778-0865

Cell 615 533-4885

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EXHIBIT "B"

Additional Property

Any real property located within five (5) miles of the perimeter boundary of the real property described on Exhibit "A" attached hereto.

AS RECORDED IN COUNTY OF MONROE, the 16th day
OF AUGUST, 2005 AT. 2:45 pm. FILED IN
PLAT CROWN E SLIDE 296. CDK.

EXHIBIT "C"

Allocation Formula for Assessments and Voting Rights

Each Parcel shall have the obligation to pay assessments based upon following formula:

a. Assigning a Land Classification to Each Parcel. A Parcel is defined in Article 1 of this Declaration as a portion of the Properties which may be independently owned and separately conveyed, such as a single family home, a townhouse, an estate lot, an office or a residential condominium unit, an apartment building, an office building, or a retail center. The Declarant during the Development Period and the Board of Directors thereafter, shall determine in its sole discretion the Land Classification for each Parcel. The following Land Classifications are initially proposed for purposes of determining each Parcel's assessment obligation based upon each Parcel's use. The Declarant during the Development Period and the Board of Directors thereafter shall have the right to create new Land Classifications and to modify the definitions of existing Land Classifications. The initial Land Classifications will include the following: (a) Retail and Office—Parcels used for commercial or civic purposes, such as restaurants, specialty retail shops, office condominium units, civic buildings, and office buildings; (b) Multi-Family Residential—Parcels that contain one or more residential dwellings that may not be separately conveyed, such as a building containing apartments; (c) Single-Family Residential—Parcels that contain a single residential dwelling which may be separately conveyed, such as an attached or detached single family home, a townhome unit, a cottage, and a residential condominium unit.

To clarify, one building may contain multiple Parcels with different Land Classifications (such as a building with retail condominium units on the first floor and several residential condominium units on the second floor). Also, one Parcel may contain multiple uses (such as a building, which is not a condominium, with for rent retail space on the first floor and rental apartments on the second floor). However, no Parcel shall be assigned multiple Land Classifications. In any instance where a Parcel may fit into two Land Classifications, then the Land Classification containing the *higher* Benefit Factor as described in Paragraph (c) below shall apply to such Parcel.

b. Establishing Building Points for each Parcel. Each Parcel shall be assigned points ("Building Points") as follows:

(1) Building Points for Parcels classified as "Single-Family Residential": Any Parcel classified as "Single-Family Residential", as provided in Paragraph (a) above, shall be allocated one (1) Building Point per Parcel regardless of the number of square feet of the Improvements on the Parcel. With respect to any unimproved Parcel which is classified as "Single-Family Residential", the Parcel shall be deemed to be allocated one (1) Building Point.

(2) Building Points for Parcels classified as "Retail and Office" or "Multi-Family Residential": Any Parcel classified as either "Retail and Office" or "Multi-Family Residential", as provided in Paragraph (a) above, shall be allocated one (1) Building Point for every 1,000 square feet, or fraction thereof, of gross floor area within the Parcel's "Structure(s)". Structures shall be deemed to include enclosed retail, office, or living spaces for which an initial certificate of occupancy has been issued or which are substantially complete, as determined by a licensed engineer or architect. Exterior areas such as parking garages, roadways, unenclosed balconies, outdoor terraces, breezeways, sidewalks (canopy-covered or otherwise) or driveways shall not be part of the square foot measurement of a Structure. Interior spaces such as vestibules, lofts, utility rooms, enclosed patios, and storage closets, shall be included as part of the square foot measurement of a Structure. The Declarant during the Development Period and the Board of Directors thereafter shall determine the final square foot measurement of the gross floor area of a Structure in its sole discretion. With respect to any unimproved

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Parcel (i.e., a Parcel containing no Structures), the Parcel shall be deemed to include the number of square feet of gross floor area of a Structure intended to be constructed on such Parcel in accordance with the Master Plan, as determined in the sole discretion of the Declarant.

c. Assigning a Benefit Factor to each Parcel based upon its Land Classification.

Each Parcel shall be assigned a Benefit Factor which is established based upon the Land Classification assigned to the Parcel as follows:

<u>Land Classification</u>	<u>Benefit Factor</u>
Town Center Retail and Office	1.5
Multi-Family Residential	1.0
Single-Family Residential	2.0

d. Computation of Assessment Points. The total number of Building Points assigned to each Parcel as determined in Paragraph (b) above shall be multiplied by the Benefit Factor assigned to the Parcel as determined in Paragraph (c) above to calculate the total Assessment Points applicable to the Parcel.

e. Assessments. The decimal share of the total assessment to be levied on a particular Parcel shall be computed by dividing the Assessment Points assigned to that Parcel by the total Assessment Points for all Parcels subject to the particular assessment. The Board of Directors shall establish an annual cut-off date for computing point totals for all Parcels. The decimal share of the total assessment for the Parcel (including a summary of the computations) shall be sent to each Owner and Neighborhood Assessor with the annual notice of assessment.

f. Votes. The weight of the vote allocated to each Parcel shall be computed using the same formula set forth above for assessments.

g. Re-evaluation of Land Classification, Building Points, and Benefit Factor. Parcels are subject to re-evaluation and re-classification at the sole option of the Declarant or Board, as applicable, upon the occurrence of either (a) a change in ownership of the Parcel or (b) a change in use of the Parcel approved pursuant to Article 13. Such reclassification shall be made and become effective immediately upon such change or in conjunction with the preparation of the budget as set forth in Section 8.2 of the Declaration, as determined in the sole discretion of the Declarant during the Development Period or the Board thereafter.

h. Examples (for Illustrative Purposes ONLY) of Calculating a Parcel's Assessment Points.

1. A 3,250 square foot unimproved Parcel (i.e. raw land) intended to be improved with a commercial retail building with 2,215 square feet of enclosed space and a 1,035 outdoor patio and breezeway area is assigned three (3) Building Points as shown in the first calculation below. Based upon a Land Classification of "Town Center Retail and Office" and a corresponding Benefit Factor of 1.5, this Parcel would be assigned four and one-half (4.5) Assessment Points, as follows:

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$2,215 \text{ square feet} \div 1,000 = 2.15 = 3 \text{ Building Points}$ (each fraction of a Building Point shall constitute one full Building Point).

$(3 \text{ Building Points}) \times 1.5$ [Benefit Factor for Town Center Retail and Office Space] = 4.5 Assessment Points.

2. A 1,500 square foot Parcel improved with a two-story townhome having a total of 2,700 square feet is assigned one (1) Building Point because its Land Classification is Single-Family Residential. Applying the Benefit Factor for the Single-Family Residential Classification of 2.0, this Parcel would be assigned two (2) Assessment Points, as follows:

One (1) Building Point per Parcel classified as "Single-Family Residential"

$(1 \text{ Building Point}) \times 2.0$ [Benefit Factor for Single-Family Residential] = 2 Assessment Points

3. A 50,000 square foot Parcel of land contains five (5) buildings, each of which contain four (4) 1000 square foot for-rent apartments, resulting in 20,000 square feet of Structures on the Parcel. The Parcel is assigned twenty (20) Building Points (one Building Point for every 1,000 square feet of Structures). Based on a Land Classification of Multi-Family Residential and a Benefit Factor of 1.0, this Parcel would be allocated twenty (20) Assessment Points as follows:

$20,000 \text{ square feet} \div 1,000 = 20 \text{ Building Points}$

$(20 \text{ Building Points}) \times 1.0$ [Benefit Factor for Multi-Family] = 20 Assessment Points

4. A tract of land is improved with a building that contains 2 stories with 1,000 square feet of Structures on each story (2,000 square feet total). The Owner is an accountant who maintains his professional offices on the lower level and resides in the upper level apartment. Neither floor of the building is capable of being separately conveyed, and therefore, the entire building on this tract of land constitutes a single Parcel despite its multiple uses. Because of these multiple uses, this Parcel may fit into multiple Land Classifications. Because the upstairs residential apartment cannot be separately conveyed, this Parcel cannot be classified as "Single-Family Residential". Instead, this Parcel may be classified as either "Multi-Family Residential" based upon the apartment on the second floor or "Town Center Retail and Office" based upon the office use of the lower level. Because the "Town Center Retail and Office" classification has the higher Benefit Factor of the two possible Land Classifications, the Parcel shall be classified as "Town Center Retail and Office" and would be allocated three (3) Assessment Points, as follows:

$2,000 \text{ square feet} \div 1,000 = 2 \text{ Building Points}$

$(2 \text{ Building Points}) \times 1.5$ [Benefit Factor for Town Center Retail and Office] = 3 Assessment Points

5. The Owner of the building described in Example 4 above, converts the building to a condominium so that the building contains a 1,000 square foot office condominium unit on the first floor and a 1,000 square foot residential condominium unit on the second floor. In this scenario, each condominium unit is now a separate Parcel because each such Unit may be separately conveyed. The Assessment Points for each Parcel are calculated as follows:

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For the First Floor Office Condominium Unit classified as "Town Center Retail and Office":

1,000 square feet ÷ 1,000 = 1 Building Point

(1 Building Point) x 1.5 [Benefit Factor for Town Center Retail and Office] = 1.5 Assessment Points

For the Second Floor Residential Condominium Unit classified as "Single-Family Residential":

One (1) Building Point per Parcel classified as "Single-Family Residential"

(1 Building Point) x 2.0 [Benefit Factor for Single-Family Residential] = 2 Assessment Points

State of Tennessee, County of MONROE
Received for record the 18 day of
AUGUST 2005 at 2:52 PM. (RECH 167363)
Recorded in Book #165 pages 242- 302
State Tax \$.00 Clerks Fee \$.00,
Recordings \$ 307.00, Total \$ 307.00,
Register of Deeds MILDRED A ESTES