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# THIS IS NOT A BILL

Pam Hurst  
Hamilton County Register of Deeds

Hamilton County, Tennessee

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Index:	GENERAL INDEX		
Book:	9325	Page:	791
No Pages:	28		
Instrument:	MASTER DEED		
Instrument No:	2011010500084		
Reference No:			

- 1 GARDENS AT HERITAGE GREEN CONDOMINIUM ASSN INC
- 2 MASTER DEED

		Exempt
DEED RECORDING FEE	140.00	N
DATA PROCESSING FEE	2.00	N
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Total:	142.00	

State of Tennessee

Recorded on: Jan 05, 2011 11:23:09 AM

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Pam Hurst, Register  
P. O. Box 1639, Chattanooga, TN  
Phone: (423) 209-6560

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Instrument: 2011010500084  
Book and Page: G1 9325 791  
DEED RECORDING FEE \$140.00  
DATA PROCESSING FEE \$2.00  
Total Fees: \$142.00  
User: KDS  
Date: 1/5/2011  
Time: 11:23:09 AM  
Contact: Pam Hurst, Register  
Hamilton County, Tennessee

Prepared by and when recorded  
Return to:  
Susan E. Rich, Esq.  
Baker, Donelson, Bearman,  
Caldwell & Berkowitz, P.C.  
1800 Republic Centre  
633 Chestnut Street  
Chattanooga, TN 37450-1800

File

**THIRD AMENDMENT TO MASTER DEED**  
**FOR THE GARDENS AT HERITAGE GREEN CONDOMINIUM ASSOCIATION, INC.**

Re: Master Deed dated November 17, 2004 from A. L. James Construction and Development, LLC (“Developer”) for The Gardens at Heritage Green Condominium Association, Inc., recorded in Book 7344, Page 922 in the Register’s Office of Hamilton County, Tennessee.

The First Amendment to Master Deed was made as of the 22nd day of May, 2009 by the Board of Directors (the “Board”) of The Gardens at Heritage Green Condominium Association, Inc. (the “Association”).

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The Second Amendment to Master Deed was made as of the 12th day of October, 2010 by the Board of the Association.

This Third Amendment to Master Deed is made as of the \_\_\_ day of December, 2010 by the Board of the Association.

**WITNESSETH:**

WHEREAS, from time to time there arises a need for review and changes to the Bylaws of the Association (the “Bylaws”) the last version of which was recorded in Book 9269, Page 548 in the Register’s Office of Hamilton County, Tennessee; and

WHEREAS, the Board voted to amend the language in Sections 5.2, 6.2, 6.5, a., b., c. and d. of the Bylaws to provide that the officers, as well as each chairperson of the standing committees, shall be elected by a majority vote of the membership of the Association; and

WHEREAS, at a special called meeting on December 22, 2010 by the Board, such amendment was approved by an affirmative vote of all Board members and the new language for Sections 5.2, 6.2 and 6.5, a., b., c. and d. is now contained within the amended and restated version of the Bylaws attached hereto, which replaces and consolidates all previous recorded versions of the Bylaws.

IN WITNESS WHEREOF, the undersigned, on behalf of the Board, executed this Third Amendment to the Master Deed as of the 4th day of January, 2011.

For and on behalf of the Board:

By: Ursula W. Jenkins  
Ursula W. Jenkins, Secretary

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STATE OF TENNESSEE  
COUNTY OF HAMILTON

Before me, SUSAN E. RICH, a Notary Public in and for said State and County aforesaid, duly commissioned and qualified, personally appeared Ursula W. Jenkins, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the Secretary of and a member of the Board of The Gardens at Heritage Green Condominium Association, LLC, and that she, as such Secretary and a member of the Board, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained.

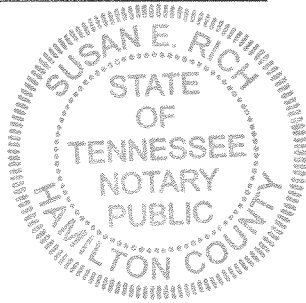
WITNESS my hand and seal at office on this the 4<sup>th</sup> day of January, 2011.

*Susan E. Rich*  
Notary Public

My Commission Expires:

3/25/2012

(Notary Seal)



**THE GARDENS AT HERITAGE GREEN  
CONDOMINIUM ASSOCIATION, INC.**

**BY-LAWS**

The Gardens at Heritage Green Condominium Association, Inc., a Tennessee non-profit corporation, created pursuant to the terms and provisions of the Master Deed for The Gardens at Heritage Green Condominiums recorded herewith in the Register's Office of Hamilton County, Tennessee, declaring that the provisions of these By-Laws were duly approved by the Board of Directors of The Gardens at Heritage Green Condominium Association, Inc. on \_\_\_\_\_ does hereby publish these By-Laws pursuant to Tenn. Code Ann. § 66-27-111.

**ARTICLE 1**

**NAME**

The following provisions shall constitute the By-Laws (the "Bylaws") of The Gardens at Heritage Green Condominium Association, Inc., a not-for-profit corporation (the "Association") which shall, along with the provisions of the Master Deed and the Rules and Regulations adopted by the Board of Directors of the Associating (the "Board"), govern the administration of The Gardens at Heritage Green Condominium Association, Inc., Chattanooga, Tennessee (the "Property"). The terms in these Bylaws shall have the same meaning as the terms defined in the Master Deed for the Property.

**ARTICLE 2**

**OFFICES**

The principal office of the Association in the State of Tennessee shall be located at \_\_\_\_\_, Hamilton County, Tennessee, or at such other place either within the State of Tennessee, as shall be lawfully designated by the Association, or as the affairs of the Association may require from time to time.

**ARTICLE 3**

**PURPOSES**

The purpose of this Association shall be to provide for the establishment of an owner association for the government of the Property in the manner provided by these Bylaws and in its Charter (the "Charter"). The aims of this Association are to be carried out through any and all lawful activities, including others not specifically stated in the Charter or these Bylaws but incidental to the stated aims and purposes; provided, that any such activity or contribution shall conform to any applicable restrictions or limitations set forth in the Charter of which are imposed on real estate associations by those provisions described in Section 528(c) of the *Internal Revenue Code* and the regulations thereunder, as presently enacted, or as they may hereafter be

amended or supplemented, or, if they are replaced, by new sections of similar import, and to the final laws, rules and regulations thereunder. All present or future Owners or tenants, or their employees, or any other person who might use the facilities on the Property in any manner, shall be subject to the covenants, provisions or regulations contained in the Master Deed for the Association (the "Master Deed") and these Bylaws, and shall be subject to any restriction, condition or regulation hereafter adopted by the Association. The mere acquisition or rental of any Unit, or the mere act of occupying of any Unit, will constitute acceptance and ratification of the Master Deed and of these Bylaws.

#### ARTICLE 4

##### ASSOCIATION OF MEMBERS

4.1 MEMBERSHIP. The membership shall be limited to and shall consist of the Class "A" and Class "B" Members, as described in Article IV of the Master Deed (collectively, the "Members"). Upon acquisition of title to a Unit, a person shall automatically become a Member.

4.2 DUES. The Board may prescribe annual dues for Members as the Board sees fit for those reasons described in Paragraphs 8.2 and 8.3, which Members shall be required to pay, unless waived by the unanimous consent of the Association.

4.3 RIGHTS OF MEMBERS. All Members shall be entitled to vote as hereinafter described, shall be eligible to serve on the Board, and shall be entitled to all rights of membership.

4.4 TERMINATION. All Members shall be entitled to vote as hereinafter described, shall be eligible to serve on the Board, and shall be entitled to all rights of membership.

##### 4.5 VOTING RIGHTS.

(a) In General. Each Member shall be entitled to one (1) vote for each Unit owned by such Member. Any provision to the contrary notwithstanding, joint Owners shall be deemed one (1) Member. If any Unit shall be owned by more than one (1) person or by a corporation, partnership or one (1) or more fiduciaries, such Owner(s) shall designate one (1) person to represent such Unit with respect to the Association and to cast the vote of such Unit. The Association shall be entitled to reply in good faith upon the actions of, and votes cast by, such designee of the Owner.

(b) Developer's Rights. Developer or its successors or assigns shall have at all times the votes reserved for Class "B" Members.

#### ARTICLE 5

##### ASSOCIATION MEETINGS

5.1 FIRST ANNUAL MEETING. The first annual meeting of the Association shall be called by the Developer at such time as it is determined that a sufficient number (as determined by the Developer) of homeowners have established residence in the development.

5.2 ANNUAL MEETINGS. An annual meeting of the Association shall be held on the first (1<sup>st</sup>) Tuesday of February of each year, if not a legal holiday and if a legal holiday then on the next succeeding business day, for the purpose of electing the Officers of the Association, electing the Chairperson of the Standing Committees and such other business as comes before the meeting.

5.3 SPECIAL MEETINGS. Special meetings of the Association may be called for any reasonable purpose by the President or by those Members representing not less than twenty five percent (25%) of the total vote of the Association. Upon written request delivered either in person or by certified mail to the Secretary of the Association by any persons entitled to call a meeting of Members, the Secretary shall forthwith cause notice of the meeting to be given to the Members entitled thereto. Said meeting shall be held on a date not less than ten (10) nor more than sixty (60) days after the receipt of such request, as the Secretary may determine. If such notice is not given within thirty (30) days after the delivery or mailing of such request, the person(s) calling the meeting may fix the time of the meeting and give notice thereof. Each special meeting shall be called to convene at such time as may be designated and shall be held on the Property or at such other reasonable place within the Chattanooga Metropolitan Area as shall be specified in the notice of the meeting.

5.4 NOTICE OF MEETINGS. A written notice of every meeting of the Association stating whether it is an annual meeting or special meeting, the authority for the call of the meeting, the place, day and hour thereof, and the purpose therefore shall be given by the Secretary, or the person or persons calling the meeting, not more than sixty (60) days nor less than ten (10) days before the date set for such meeting. Such notice shall be given to each Member in any of the following ways: (a) by leaving the same with a Member personally, or (b) by leaving the same at the residence or usual place of business of such Member, or (c) by mailing it, postage prepaid, addressed to such Member's address as it appears on the records of the Association, or (d) if such Member cannot be located by reasonable efforts, by publishing such notice in any newspaper of general circulation in the City of Chattanooga, such notice to be published not less than two (2) times on successive days, the first publication thereof to be not less than ten (10) days prior to the date assigned for the meeting. If notice is given pursuant to the provisions of this section, the notice is given pursuant to the provisions of this section, the failure of any Member to receive actual notice of the meeting shall in no way invalidate the meeting or any proceeding thereat. Upon written request for notices mailed by registered mail, addressed to the Secretary at the address of the Association, the holder of any duly recorded mortgage against any Unit may promptly obtain a copy of any and all notices permitted or required to be given to the holder of any mortgage requesting such notice until said request is withdrawn and said mortgage is discharged of record.

5.5 WAIVER OF NOTICE: The presence of a majority of Members, in person or by proxy, at any meeting shall render the same a valid meeting, unless any Member shall, at the opening of such meeting, object to the holding of the same for non-compliance with the provisions of Paragraph 5.4. Any meeting so held without objection shall, notwithstanding the fact that no notice of the meeting was given, or that the notice given was improper, be valid for all purposes, and at such meeting any general business may be transacted and any action may be taken.

5.6 QUORUM. At any meeting of the Association, a fifty percent (50%) or More voting majority of all Members present, by person or by proxy, shall constitute a quorum, and action approved by a majority vote of the Members present shall be valid and binding upon the Association except as otherwise provided by law or these Bylaws. In the event a Member's vote is pledged by mortgage, deed of trust, or agreement of sale, such Member's vote will be recognized in computing a quorum with regard to any business conducted concerning such matters upon which said Member's vote is so pledged or mortgaged unless the mortgage, deed of trust, or agreement of sale provides otherwise, in which case such instruments shall control.

5.7 PROXIES. A Member may vote either in person or by proxy at a regular or special meeting of the Association. The authority given by a Member to another person to represent such Member at meetings of the Association shall be in writing, signed by such Member, or if a Unit is jointly owned, by all joint owners, or if such Member is a corporation, by the proper officers thereof, and shall be filed with the Secretary, and unless limited by its terms, such authority shall be deemed good until revoked in writing. An executor, administrator, guardian, or trustee may vote in person or by proxy at any meeting of the Association with respect to any Unit owned or held by such person only after documenting to the Secretary's satisfaction that the Unit is owned or held in such capacity.

5.8 ORDER OF BUSINESS. The order of business at all meetings of Member shall, unless otherwise agreed upon by those Members present, by person or proxy, be as follows:

- (1) Calling of meeting to order.
- (2) Proof of notice of meeting or waiver of notice.
- (3) Reading of minutes preceding meeting.
- (4) Reports of officers.
- (5) Reports of committees.
- (6) Unfinished and/or old business.
- (7) New business.
- (8) Adjournment.

5.9. ADJOURNMENT. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by a majority vote of the Members present, whether a quorum be present or not, without notice other than the announcement at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

## ARTICLE 6

### BOARD OF DIRECTORS

6.1 NUMBER AND QUALIFICATION. The direction and administration of the affairs of the Association shall be governed by a Board and shall constitute the "Board of Administration" as required by Section 66-27-112 of the Horizontal Property Act of the State of Tennessee, as amended (the "Act"), and all rights, title powers, privileges and obligations vested in or imposed upon the "Board of Administration" in the Act, in the Master Deed or in these Bylaws may be

held or performed by the board, or by the duly elected Members of the Association. Except as hereafter provided, the Board shall be initially composed of four (4) officers (President, Vice-President, Secretary and Treasurer) and the four (4) elected chairpersons of the four (4) standing committees of the Association, who shall be elected in the manner hereinafter provided and increased or decreased at any annual meeting by a majority vote, and all such Directors shall be Members, provided, however, that in the event a Member is a corporation, partnership, trust or other legal entity other than a natural person, then any majority shareholder, officer or director of such corporation, partner or such partnership, beneficiary or individual trustee of such trust or manager of such other legal entity shall be eligible to serve as a Director. During that period prior to the election of the first Board, Developer shall have the powers and duties of the Board, and shall act for and on behalf of the Association.

6.2 ELECTION AND TERM OF OFFICE. The Officers and Chairperson of the Standing Committees shall be elected by a majority vote of the Membership and each shall serve for a term of two (2) years.

6.3 VACANCIES. Vacancies in the Board caused by any reason other than the removal of a Director by a vote of the Association shall be filled by the majority vote of the remaining Directors, even though they may constitute less than a quorum; and each Member so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

6.4 REMOVAL. At any regular meeting of the Association or a special meeting called for such purpose, any one (1) or more of the Directors may be removed, with or without cause, by the majority vote of the Members, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting.

6.5 STANDING COMMITTEES. Below are listed the four (4) Standing Committees of the Association. The Chairperson for each Standing Committee shall be elected by a majority vote of the Membership and each shall serve for a term of two (2) years. Members of the committees must be members of the association and each committee will have at least three (3) and no more than eight (8) members. Committees may meet as frequently as necessary but will have at least an annual meeting prior to the general membership meeting.

a. Finance and Accounting Committee. The chair of the Finance and Accounting Committee (FAC) is elected by a majority vote of the Membership and is a voting member of the Board. The responsibilities of the FAC include, but are not limited to establishing a uniform set of accounting procedures for the Association and administered by the Treasurer. The FAC also has responsibility for budgetary and financial projections regarding regular assessments. In the unlikely event of the need for a special assessment, it shall be the FAC's responsibility to consider, justify and recommend such action to the Board.

b. Architectural Standards Committee. The chair of the Architectural Standards Committee (ASC) is elected by a majority vote of the Membership and is a voting member of the Board. The ASC is responsible for recommending to the Board, rules, regulations and standards for the



exterior appearance of all condominiums. In addition, the ASC should provide guidance and recommendations to the Board regarding rules and regulations related to pets, nuisances, antennas, motor vehicles, trailers, etc. and other areas of concern which might have an adverse impact on the preservation and enhancement of the value of the properties within the Development.

c. Insurance and Asset Management Committee. The chair of the Insurance and Asset Management Committee (IAMC) is elected by a majority vote of the Membership and is a voting member of the Board. The responsibilities of the IAMC include all aspects of risk and asset management for the Association. In addition, it is the responsibility of this Committee to make projections and recommendations for amounts needed to be set aside in a Reserve for Replacement account.

d. Landscaping and Common Areas Committee. The chair of the Landscaping and Common Areas Committee (LCAC) is elected by a majority vote of the Membership and is a voting member of the Board. It shall be the LCAC's responsibility to continue with the current program of shrub planting and replacement. In addition, the Committee shall be responsible for landscape maintenance of all common areas, including planting of annuals and recommending to the Board an overall landscaping plan for the Development. The LCAC has responsibility for recommending sub-contractors to provide all budgeted services associated with maintenance of the landscaping and common areas of the development.

## ARTICLE 7

### DIRECTORS MEETINGS

7.1 ORGANIZATION MEETING. The first meeting of a newly elected Board shall be held within a reasonable time of their election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, providing a majority of the whole Board shall be present. Until the first meeting of the first Board of Directors, Developer shall act as and for the Board.

7.2 REGULAR MEETINGS. Regular annual meeting of the Board shall be held within a reasonable time after the annual meeting of the Association, and at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings of the Board shall be given to each Director, personally or by mail, addressed to said Director's residence, or by telephone, at least five (5) days prior to the day named for such meeting.

7.3 SPECIAL MEETINGS. Special meetings of the Board may be called by the President on three (3) days notice to each Director, given personally or by mail, addressed to the Director's residence or place of business, or by telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board may be called in like manner and on like notice, by the written request to the President and at least one (1) Director.

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

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

## ARTICLE 8

### BOARD'S POWER AND DUTIES

8.1 DISPUTES. In the event of any dispute or disagreement between any Members relating to the Property, or any question of interpretation or application of the provisions of the Master Deed and the Exhibits thereof, the determination thereof by the Board shall be final and binding on the Members.

8.2 POWERS OF BOARD. The board shall exercise the powers necessary for the administration of the affairs of the Association and may do all such acts as are not by the Act or other laws, the Master Deed or by these Bylaws directed to be exercised and done by the Members, which shall include the following.

- (a) Engage the services of a manager or managing agent for the purposes of management and daily care of the Property who may be any person, firm or corporation, upon such terms and compensation as the Board deems reasonable, and to remove such manager or managing agent at any time;
- (b) Engage the services of any persons deemed necessary by the board, for the administration, operation, repair, surveillance and maintenance of the Property, upon such terms and compensation deemed reasonable by the board, and to remove at any time any such personnel;
- (c) Establish or maintain one or more bank accounts for the deposit of any funds paid to the Association, or received by the Board on behalf of the Association;
- (d) Make such charges and assessments as the Board sees fit for the operation, repair, surveillance and maintenance of the Common Elements, including the discharge of the duties of the Board, described in Paragraph 8.3 hereof, on such terms as the Board sees fit, and any funds received by the board for any such use shall become a part of a maintenance fund;

(e) Appoint committees of the Association and to delegate to such committees the Board's authority to carry out certain duties of the Association, and to allow Members to attend the meetings of such committees;

(f) Bid and purchase, for and on behalf of the Association, any Unit, or interest therein, at a sale pursuant to a mortgage foreclosure, a foreclosure of the lien for common Expenses under the Act or the Master Deed, or an order or direction of a court or at any other involuntary sale, upon the consent or approval of not less than seventy-five percent (75%) of the total vote of the Association, provided that such consent shall set forth a maximum price that the Board or its duly authorized agent may bid and pay for such Unit or interest therein;

(g) Make such mortgage arrangements, levy special assessments proportionately among the respective Members and make other financing arrangements, with the approval of not less than seventy five percent (75%) of the total vote of the Association, in order to close and consummate the purchase of a Unit, or interest therein, by the Association, provided, however, that no such financing arrangement shall be secured by an encumbrance of any interest in the Property other than the Unit, or interest therein, to be purchased or leased;

(h) Unless otherwise provided herein or in the Master Deed comply with the instructions expressed in a resolution duly adopted at any annual or special meeting of the Association;

(i) Act in a representative capacity in relation to matters involving the Common Elements, or more than one (1) Unit, on behalf of the Association and its Members as their interests may appear; and

(j) Exercise all other powers and duties of the Board or the Members as a group referred to in the Act and all powers and duties of a Board referred to in the Master Deed or these Bylaws.

8.3 DUTIES OF BOARD. The Board must perform those duties necessary for the proper administration of the affairs of the Association, including those duties imposed by the Act, the Master Deed, these Bylaws or resolution of the Association and shall be responsible for the following:

(a) CARE OF THE COMMON ELEMENTS. Care, upkeep, and surveillance of the Property, including the Common Elements and facilities by performing, acting, acquiring, making arrangement for, and paying out of the maintenance fund the following:

(i) manager, managing agent or other personnel necessary for the maintenance, security and operation of the Property, its Common Elements and facilities, at specified and described in Paragraph 8.2:

(ii) water, waste removal, electricity, telephone and other necessary utility services for the Common Elements;

(iii) such insurance as the Association is required to obtain and such other insurance as the Board deems advisable in the operation and management of the Property (any losses under such policies of insurance shall be payable and all insurance proceeds recovered thereunder shall be applied and disbursed in accordance with the provisions of the Act, the Master Deed, and the Exhibits thereto;

(iv) the services of a bank or trust company, authorized to do business in the State of Tennessee, to act as trustee or agent on behalf of the Association for the purpose of receiving and disbursing the insurance proceeds resulting from any loss and the proceeds from any condemnation, upon such terms as the Board shall determine consistent with the provisions of these Bylaws, the Master Deed and the Exhibits thereto;

(v) worker's compensation insurance to the extent necessary to comply with any applicable law;

(vi) landscaping, gardening, snow removal, painting, cleaning, maintenance, decorating, repair and replacement of the Common Elements and such furnishings and equipment for the Common Elements as the Board shall have the exclusive right and duty to acquire the same for the Common Elements;

(vii) any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or assessments which the Board deems necessary or proper for the maintenance and operation of the Property as a first class condominium development, for the enforcement of any restrictions or provisions contained in these Bylaws, the Master Deed and the Exhibits thereto;

(viii) any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof which in the opinion of the Board constitutes a lien against the Property as a whole or against the Common Elements, rather than merely against the interest therein of particular Members (where one (1) or more Members are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any cost incurred by the Board by reason of said lien shall be specially assessed to said Members, and shall, until paid by such Members, constitute a lien on the interest of such Members in the Property as provided in the Act with respect to liens for failure to pay a share of the Common Expense); and

(ix) maintenance and repair under the terms of these Bylaws and Master Deed, or the Exhibits thereto, if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements, or any portion of the Property.

(b) BUDGET AND COLLECTION OF ASSESSMENTS.

(i) Each year on or before September 1, the board shall estimate the annual budget of the Common Expenses (the "Annual Budget"), including the total amount required for the cost of wages, materials, insurance, services, and supplies which will be required during the ensuing calendar year for the rendering of all services together a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall notify each Member obligated by Article VIII of the Master Deed to share in General Assessments in writing as to the amount of such estimate with reasonable itemization thereof. The Annual Budget shall be composed of (a) the projected expenses to operate and maintain the Common Elements, and (b) the replacement reserve established by the Board for the Common Elements, based on the original construction cost of each Unit. The portion of the Annual budget attributable to (a) in

the immediately preceding sentence shall be assessed equally to each Member on a pro-rated basis, and the portion of Annual Budget attributable to (b) in the immediately preceding sentence shall be assessed to the Members based on their respective Unit ownership. On or before the first day of each month of said year, each such Member shall be obligated to pay to the board, or to such persons as it may direct, one-twelfth (1/12) of the assessment made pursuant to this subparagraph;

(ii) On or before the last day of February of each calendar year, the Board shall supply to all Members an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid together with the tabulation of the amounts collected pursuant to the estimates provided and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be added to the current Association miscellaneous operating budget category and the reserve for replacement category in equal proportion;

(iii) The Annual Budget shall include and the Board shall build up and maintain a reasonable reserve for, contingencies and replacements. Extraordinary expenditures not originally included in the Annual Budget which may become necessary during the year shall be charged first against such reserve, but if said Annual Budget provision is inadequate for any reason, including non-payment of any Member's assessment, the Board may at any time and from time to time propose an additional assessment in conformance with Article VIII, Section 3 of the Master Deed, which shall be assessed to the Members obligated by Article VIII of the Master Deed to share in General Assessments in equal proportions. Upon approval, the Board shall serve notice of such further assessment to such Members by a statement, in writing, giving the amount, and such assessment shall become effective with the monthly maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice or further assessment, and all such Members shall be obligated to pay the adjusted monthly amount.

(iv) When the first Board elected hereunder takes office, it shall determine the first Annual Budget for the period commencing a reasonable time after said election and ending on the last day of the calendar year in which said election occurs. Assessments shall be levied against each Member obligated by Article VIII of the Master Deed to share in General Assessments during said period as provided in this Paragraph.

(v) Notwithstanding the foregoing, the Members shall not be responsible for payment of their respective assessments until they receive from Developer, or an Owner of a Unit, title to a Unit.

(c) INSURANCE. The Board, on behalf of the Association and its Common Expense, shall at all times keep the Common Elements insured under casualty insurance with an insurance company authorized to do business in the State of Tennessee in an amount as near as practicable to the full replacement value thereof without deduction for depreciation, in the name of the Association, as trustees for all Members and mortgagees, according to the loss or damage to their respective appurtenant common interests and payable in case of loss to such bank or trust company authorized to do business in the State of Tennessee as the Board shall designate for the custody and disposition, as herein provided, of all proceeds of such insurance, and from time to time upon receipt thereof cause to be deposited promptly with the Members and mortgagees of

the Units or interests therein, true copies of such insurance policies or current certificates thereof, without prejudice to the right of each Member to insure the Unit for said Member's own benefit. In every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing, or otherwise reinstating the same building in a good and substantial manner according to the original plan and elevation thereof, or such modified plans conforming to laws and ordinances then in effect as shall be first approved by the Association and all mortgagees of the Units or interests therein, and the Association at its common expense shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall:

- (i) provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counter-claim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Member;
- (ii) contain no provision relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Association, or because of any breach of warranty of condition or any other act or neglect by the Board or any Member or any other person under either of them;
- (iii) provide that such policy may not be cancelled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days prior written notice thereof to the Association, Members, and every other person in interest who shall have requested such notice of the insurer;
- (iv) contain a waiver by the insurer of any right of subrogation to any right of the Association or Members against any of them or any other person under them;
- (v) contain a standard mortgagee clause which shall:
  - (A) provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit, in their respective order and preference, whether or not named therein;
  - (B) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, Association, or Members or any persons under any of them;
  - (C) waive any provision invalidating such mortgagee clauses by reason of the failure to any mortgagee to notify the insurer of any hazardous use or vacancy, and require that the mortgagee pay any premium thereon, and any contribution clause; and
  - (D) provide that without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Association.

8.4 LIABILITY OF BOARD. The Directors shall not be liable to the Association for any

mistakes of judgment or of any acts or omissions made in good faith by such Directors. The Association shall indemnify and hold harmless each Director against all liabilities to others arising out of contracts made or acts or omissions by such Directors on behalf of the Association, unless any such contract, act or omission shall constitute willful misconduct or gross negligence. The liability of any Member arising out of any contract, act or omission by such Director or out of the aforesaid indemnity shall be limited to a proportionate share of the total liability thereunder, which share shall be equal to that share borne by every other Member. Each agreement made by such Directors shall be executed by such Directors as agents for the Association.

8.5 COMPENSATION. No compensation shall be paid to Directors for their services as Directors. No remuneration shall be paid to a Director for services performed for the Association in any other capacity, unless a resolution authorizing such remuneration shall have been adopted by two-thirds (2/3) vote of the Association before the services are undertaken. A Director may not be an employee of the Association. Directors may be reimbursed for out of pocket expenses.

## ARTICLE 9

### OFFICERS OF BOARD

9.1 DESIGNATION. The principal officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer.

9.2 ELECTION AND TERM OF OFFICE. The officers of the Board shall be elected by the Membership and shall serve for a term of two (2) years and thereafter until their successors are elected.

9.3 REMOVAL. Any officer may be removed from office by the affirmative majority vote of the Association at a special meeting called for such purpose.

9.4 POWERS AND DUTIES OF PRESIDENT. The President shall be the chief officer of the Association presiding over all meetings of the Association and of the Board, and having all of the general powers and duties which are usually vested in the office of president or an association, including, but not limited to, the power to appoint committees from among the Members from time to time which are appropriate to assist in the conduct of the affairs of the Association. The President shall have the power to sign, together with any one (1) other officer designated by the Association, any authorized contracts, checks, drafts, or other instruments designated or approved by the Board, and shall have such other authority and shall perform such other duties as may be determined by the Association or otherwise provided for in the Master Deed or these Bylaws. If the President is unable to act, the Board shall appoint one of the Vice-Presidents to do so on an interim basis.

9.5 POWERS AND DUTIES OF TREASURER. The Treasurer shall have the responsibility for Association funds and securities which includes keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association, and depositing all monies and other valuable effects in the name, and to the credit of the Association in such depositories as