

THIS INSTRUMENT PREPARED BY:  
Robert L. Kahn  
Frantz, McConnell & Seymour, LLP  
Suite 500  
550 W. Main Street  
Knoxville, Tennessee 37902

**MASTER DEED**

**THE POINT AT GRAINGER'S LANDING VILLAS**

This Master Deed and the Exhibits which are attached hereto and made a part hereof are made and executed this \_\_\_\_ day of \_\_\_\_\_, 2005, by BECS, a/k/a BECS General Partnership, a Tennessee general partnership comprised of Bruce Van Horn, Eddie E. Holbrook, Jr., Curtis Cassell and Shannon Wells, for itself and its successors, grantees and assigns, (hereinafter, the "Developer"), pursuant to the provisions of the Tennessee Horizontal Property Act, Tennessee Code Annotated Sections 66-27-101, *et seq.* (hereinafter, the "Condominium Act").

**WITNESSETH:**

WHEREAS, Developer is the owner of certain real property located in Grainger County, Tennessee, more particularly described in Exhibit A of this Master Deed which is attached hereto and made a part hereof, along with certain easement rights described in said Exhibit A, (hereinafter, the "Land"); and

WHEREAS, Developer desires to submit the Land, together with all improvements (whether now existing or to be constructed), easements, rights and appurtenances thereunto belonging (hereinafter, the "Property") to the horizontal property regime of the Condominium Act for the purposes of selling, leasing, mortgaging, transferring or otherwise conveying individual units within the same to various purchasers, subject to the covenants, conditions and restrictions herein reserved; and

WHEREAS, a condominium plat entitled "The Point at Grainger's Landing," a copy of which is attached hereto as Exhibit B and made a part hereof, (hereinafter, the "Plat") has been prepared showing the location of the condominium units and other improvements on the Land; and

NOW, THEREFORE, Developer does hereby publish and declare that all of the Property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of such Property in the division thereof into condominiums, and shall be deemed to run with the Property and shall be a burden and a benefit to the Developer, its successors and assigns and any person acquiring or owning an interest in the Property, their grantees, successors, heirs, executors, administrators, devisees and assigns.

**I. DEFINITIONS**

The terms used herein or in the Exhibits attached hereto shall have the meanings stated in the Condominium Act and as follows, unless the context otherwise requires:

1. Association means The Point at Grainger's Landing Villa Owners' Association, a Tennessee non-profit corporation, its successors and assigns.
2. Bylaws means the bylaws for the administration of the Condominium (as hereafter defined) and the Association, attached hereto as Exhibit D and made a part hereof, as amended from time to time.
3. Board of Directors or Board means the governing body of the Association with the powers and duties as set forth in either this Master Deed or the Bylaws.
4. Common Elements include all items defined as general and limited common elements in the Condominium Act, and shall be all portions of the Condominium other than the Units, as more particularly set forth hereinafter.
5. Common Expenses include:
  - (a) expenses of administration of the Condominium or the Association, including without limitation costs and expenses associated with rental, taxes, special assessments and insurance;
  - (b) expenses of maintenance, operation, repair, replacement, alteration or improvement of the Common Elements and the portions of Units (as hereafter defined) and facilities located upon the Property to be maintained or repaired by the Association;

Bylaws; and (c) expenses declared Common Expenses by the provisions of the Master Deed (as hereafter defined) or

(d) any valid charge against the Condominium as a whole.

6. Condominium means all of the condominium property as a whole, when the context so permits, as well as the meaning stated in the Condominium Act.

7. General Common Elements means all Common Elements other than the Limited Common Elements (as hereafter defined).

8. Limited Common Elements means that portion of the Common Elements reserved for the exclusive use of Owners (as hereafter defined) of such Units (as hereafter defined) to which they may be appurtenant as hereinafter set forth.

9. Master Deed means this document relating to the Property pursuant to the provisions of the Condominium Act, as amended from time to time.

10. Mortgage means a deed of trust or other deed for security, as well as a mortgage.

11. Mortgagee means a beneficiary under or holder of a Mortgage.

12. Owner or Unit Owner means "co-owner" as defined by the Condominium Act, but excluding those having such interest merely as security for the performance of an obligation. Such terms also exclude those in possession of a Unit under an installment sale contract, lease purchase agreement or long term lease who do not hold title to the Unit.

13. Property includes the entire interest of the Developer in the Land to be divided into condominium units including the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto.

14. Unit means "apartment" as defined by the Condominium Act and shall be a portion of the Condominium designed and intended for individual ownership and use as set forth herein.

## II. DEVELOPMENT PLAN

The Condominium has been or will be developed in the following manner:

1. Name: The name of the Condominium development is The Point at Grainger's Landing Villas.

2. Plans: The improvements upon the Property have been or will be constructed in substantial accordance with the plans and specifications prepared by Wystwynd Designs, Inc. bearing Project No. 759-05005 (hereinafter, the "Plans"). An excerpt of the Plans is attached hereto as Exhibit C and incorporated herein by reference, showing the different Unit types and their respective square footages. Developer reserves the right to substitute materials of like quality in the construction of improvements upon the Property.

3. Units: The Condominium shall consist of sixty-nine residential Units contained within twenty-two buildings constructed on the Land, the locations and sizes of which are shown on the Plat and Plans. In addition, one commercial Unit, to be known as the "Marina Unit," will be located substantially as shown on the Plat for operation of boat slips and other uses incidental thereto, including without limitation, a convenience store.

4. Other Improvements: The Condominium includes non-exclusive parking areas, landscaping, roadways, driveways and other facilities as built by the Developer in its discretion, all of which are considered General Common Elements, except those Limited Common Elements reserved to the use of particular Units.

## III. COVENANTS, USES AND RESTRICTIONS

1. Use of Units: The Units shall be used only for purposes and in manners consistent with their design. Except as specifically provided in this Master Deed, each Unit is intended and designed for occupancy for residential purposes, only. Except as specifically provided in this Master Deed, no Unit shall be used for any purpose other than as a residence and such other uses as are approved by the Board of Directors and which are not inconsistent with the maintenance of the general character of the Property as a residential development of the class and the quality established hereunder. Each Unit shall be used for such purposes and to such extent as will not overload or interfere with any Common Element or the enjoyment thereof by the Owners of other Units.

2. Use of Common Elements: The Common Elements shall be used only for purposes and in manners consistent with their design. The Common Elements shall not be used in such a manner as to unreasonably interfere with the use and enjoyment thereof by the Owners of other Units. Except within the Marina Unit or in connection with its operation, no boats or other water craft may be moored at any time to any portion the Common Elements.

3. Subdivision: Except as may be reserved to the Developer, no Unit may be combined with another to form a larger Unit or divided or subdivided into smaller Units nor any portion less than the whole thereof sold or otherwise transferred.

4. Nuisances: No nuisance shall be allowed upon the Property, nor any use or practice which is the source of annoyance to the Unit Owners or which interferes with the peaceful possession and proper use of the Property by Unit Owners, their invitees and other guests. All parts of the Property shall be kept in a clean and sanitary condition; and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. No Unit Owner or occupant shall discharge or permit to be discharged anything into the waste lines, vents or flues of a Unit or any building or facility of the Condominium which might reasonably be anticipated to cause damage thereto, spread odors or otherwise be offensive.

5. Insurance: No Unit Owner or occupant shall commit or permit any violation of the policies of insurance taken out by the Association in accordance with the provisions of this Master Deed or the Bylaws, or do or permit anything to be done, or keep or permit anything to be kept, or permit any condition to exist which might (i) result in termination of such policies, (ii) adversely affect the right of recovery thereunder, (iii) result in reputable insurance companies refusing to provide insurance as required or permitted by the Bylaws, or (iv) result in an increase in the insurance rate or premium, unless, in the case of such increase, the Unit Owner responsible for such increase shall pay same. If the rate of premium payable with respect to policies of insurance taken out by either the Association or a Unit Owner, independently, in accordance with this Master Deed or the Bylaws shall be increased, or shall otherwise reflect the imposition of a higher rate than that applicable to the lowest rated Unit, by reason of anything that is done or kept in a particular Unit, or as a result of the failure of any Unit Owner or occupant to comply with any of the terms and provisions of this Master Deed, the Bylaws or any reasonable Rules and Regulations (as hereafter defined) of the Association, the Owner of that particular Unit shall reimburse the Association and such other affected Unit Owners, respectively, for the resulting additional premiums which shall be payable by the Association or such other Unit Owners, as the case may be. The amount of any such reimbursement due to the Association may, without prejudice to any other remedy of the Association, be enforced by assessing the same to that particular Unit as an assessment pursuant to the Bylaws.

6. Lawful Use: No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Property shall be the same as the responsibility for the maintenance and repair of Units and Common Elements as between Unit Owners and the Association.

7. Hazardous Materials: All hazardous, toxic, flammable or explosive substances brought upon any part of the Property shall at all times be maintained in accordance with applicable law.

8. Disposal of Trash: All garbage, refuse, and ashes from the buildings of the Condominium shall be deposited with care in receptacles intended for such purpose. No trash or debris shall be placed or deposited on any portion of the General Common Elements, except with care in receptacles intended for that purpose.

9. Waste: No waste will be committed on or to the Common Elements.

10. Exterior Work: No Owner or person in possession of a Unit, nor anyone on their behalf, shall, without the prior written consent of the Board of Directors, make any exterior modification, repair or replacement to or upon any Unit or Limited Common Element, or any interior modification affecting the architectural effect or appearance of the exterior or the structural soundness or integrity of the building.

11. Signs: No sign, notice, lettering or advertisement shall be inscribed or exposed on or at any window, door or other part of the Property, except such as shall have been approved in writing by the Board of Directors; nor shall anything be projected out of any window of the buildings of the Condominium without similar approval; provided, however, that one sign, not larger than two square feet, shall be permitted to be placed in the window of a Unit to advertise it for sale or lease.

12. Pets: Provided such pets shall not be or become a danger, nuisance or disturbance to persons, no more than two domestic cats, dogs and other mammals weighing less than fifty pounds each, and domestic caged birds and aquarium fish may be kept in a Unit. In no event shall any other bird, insect or animal be kept or harbored in the buildings of the Condominium. Pets shall not be permitted to run loose at any time, and pets shall not be left unattended and tied up outside their Units. All applicable leash laws shall be obeyed at all times.

13. Fences: No fences or other obstructions shall be permitted in the open space Limited Common Elements behind the residential Units (hereafter described).

14. Mailboxes: Each Unit shall have an assigned mailbox housed in a community facility. No one shall interfere with the lawful use of a mailbox, and the use of the mailboxes shall be in accordance with applicable federal regulations and the Rules and Regulations of the Association.

15. Roads: The roads located upon the Property are private. Except for emergencies or other purpose approved by the Board of Directors, only the paved portions thereof may be used for vehicular travel and they shall not be used or blocked in such manner as to unreasonably impede traffic. Overnight parking shall not be permitted on the roads or in the parking areas, without approval of the Board of Directors or the authorized manager employed in connection with operation of the Condominium.

16. Amenities: Use of the amenities which may be developed upon the Property, including the club house, tennis court and swimming pool, shall be subject at all times to compliance with this Master Deed, the Bylaws and the Rules and Regulations. The Association shall be permitted to use a portion of the club house for its administrative office. Unit Owners shall be permitted to reserve the use of amenities for private gatherings, subject to such reasonable rules, restrictions and fees as may be imposed by the Board of Directors or the manager employed in connection with operation of the Condominium.

17. Rules and Regulations: The Board of Directors of the Association may promulgate Rules and Regulations concerning the use of the General Common Elements, which Rules and Regulations may be amended from time to time by the Association in the manner provided by the Bylaws. Copies of the Rules and Regulations (and any amendments thereto) shall be furnished by the Association to all Unit Owners, and such Rules and Regulations shall be of the same force and effect as the provisions of this Master Deed and the Bylaws.

#### IV. TRANSFER OR LEASE

1. Transfer of Units: Any Unit Owner may effectively dispose of a Unit or any interest therein by sale, gift or devise without the approval of the Association. An Owner may lease his residential Unit for periods of one year or more without the approval of the Association; but leases of residential Units of less than one year shall not be permitted; and leases of residential Units for vacation or other transient purposes shall not be permitted notwithstanding the stated term of the lease. Neither may any residential Unit be subjected to any time-share program, whereby the use, occupancy or possession of the residential Unit for a fixed or floating period is circulated among purchasers of time-share intervals. The Marina Unit or any portion thereof may be leased for such periods and such purposes as the Marina Unit Owner shall deem appropriate in the furtherance of its operations, without approval of the Association.

2. Notice: All Unit Owners, including a Unit Owner who has obtained his title by gift, devise or inheritance, shall give to the Association notice of the acquiring of his title, together with such personal information as the Association may reasonably require, and a copy of the instrument evidencing his title.

#### V. GENERAL PROVISIONS

1. Enforcement: The Association or any Unit Owner shall have the right to enforce, by way of injunctive relief or otherwise, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Master Deed. Failure by the Association or by any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions, all of which shall remain in full force and effect.

#### VI. EASEMENTS

1. Enjoyment: Every Unit Owner shall have a right and easement of enjoyment in and to the General Common Elements subject to the Rules and Regulations of the Association and the provisions of this Master Deed and the Bylaws, the enforcement of which may limit or restrict such use and enjoyment.

2. Ingress and Egress. Each Unit Owner is hereby granted an easement in common with each other Unit Owner for ingress and egress through all General Common Elements, subject to the provisions of this Master Deed, the Bylaws, and the Rules and Regulations of the Association. Each Unit is hereby burdened with and subjected to an easement for ingress and egress through all Common Elements by persons lawfully using or entitled to the same.

3. Maintenance and Repairs of Common Elements. The Association and its agents and employees are hereby granted an easement over and upon all Units and Limited Common Elements for the purpose of maintenance, modification, repair and replacement of the Common Elements. With respect to a Unit, such easement shall be exercised, when practical, upon prior notice to the Unit Owner and with such Unit Owner's permission; provided that in case of emergency, such exercise may be immediate whether or not the Unit Owner has received notice, consents or is present at such time.

4. Support. Each Unit and Common Element shall have an easement for lateral and subjacent support from every other Unit and Common Element.

5. Utilities: The Board of Directors shall have the right and power to grant easements upon, across, over and under all or any portion of the General Common Elements for ingress, egress, installation, replacing, repairing or maintaining all utilities, including, but not limited to, water, gas, electricity, telephone, sewer and television.

6. Access: There shall exist in favor of any manager employed in connection with the operation of the Condominium, any other person authorized by the Board of Directors, and all policemen, firemen, ambulance personnel and all similar emergency personnel, an easement to enter upon the Property or any portion thereof, including any Unit after reasonable notice to the Owner, in the proper performance of their respective duties. In case of emergency, such entry shall be immediate whether or not the Unit Owner has received notice, consents or is present at such time.

7. Delivery Personnel: Postal employees and other *bona fide* delivery personnel shall have an easement across the Common Elements for access to the Units and any other portion of the Common Elements in the performance of their duties.

8. Encroachments. If any of the Common Elements or Units encroaches upon any Unit or Common Element, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall and does exist whether such encroachment shall be by reason of any deviation from the plans in the construction, repair, renovation, restoration or replacement of any improvement or by virtue of the settling or shifting of any land or improvement thereon. In the event any portion of the Condominium is partially or totally destroyed and later rebuilt, minor encroachments on any parts of the Common Elements or Units due to construction shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist. Provided, however, that such

easement shall not relieve a Unit Owner of liability in cases of willful and intentional misconduct or negligence by him, his agents or employees.

## VII. UNITS AND COMMON ELEMENTS

The Units of the Condominium are more particularly described and the rights of the Unit Owners are established as follows:

1. Residential Unit Boundaries. The Property is depicted on the Plat and on the Plans, and each residential Unit is given an identifying number. Each residential Unit shall include that part of the building that lies within the boundaries of the Unit (and on Limited Common Elements), which boundaries shall be determined in the following manner:

(a) Upper and Lower Boundaries. The upper and lower boundaries shall be the following boundaries extended to an intersection with the vertical boundaries:

(1) Upper Boundary. The upper boundaries of each residential Unit shall be the horizontal plane of the lowest surface of the structural roof system (including trusses, rafters and ceiling joists) above that particular portion of the Unit.

(2) Lower Boundary. The lower boundaries of each residential Unit shall be the horizontal plane coinciding with the upper surface of the concrete or other floor slab or structural flooring system of the ground floor of the Unit.

(3) Second Floor. The Unit shall not include the floor system (flooring, decking and structural members) between the first and second levels of a two-story Unit.

(b) Vertical Boundaries. The vertical boundaries shall be (i) in the case of exterior walls, the vertical planes coinciding with the interior side of the structural members of the walls, and (ii) in the case of interior common walls between Units, the vertical planes coinciding with the interior side of the structural members of the partition walls.

(c) Finishes. A Unit shall include the drywall and flooring materials, all wall, floor and ceiling coverings and coatings, and other interior finishes.

(d) Fixtures. A Unit shall also include the cabinetry, appliances, and plumbing and lighting fixtures.

2. Marina Unit. All structures, facilities and amenities constructed or installed at or on the Marina Unit shall be a part of that Unit.

3. Appurtenances to Units: The Owner of each Unit shall own a share of and certain interests in the Condominium that are appurtenant to his Unit, including but not limited to the following items:

(a) General Common Elements: Each Unit Owner shall own, as an appurtenance to his Unit, an undivided share of the General Common Elements and in any surplus possessed by the Association, such share being one-seventieth (1/70<sup>th</sup>) of the General Common Elements. Ownership of the Unit and the share of the General Common Elements may not be divided, and any transfer of the Unit shall include a transfer of the interest in the General Common Elements appurtenant thereto. The General Common Elements are hereby declared to be subject to a perpetual nonexclusive easement in favor of all Unit Owners and assigns, for their use and the use of their guests and lessees for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended and such easement shall be appurtenant to and shall pass with the title to each Unit, subject to the restrictions and limitations elsewhere provided in this Master Deed and the Bylaws.

(b) Limited Common Elements: Limited Common Elements shall be for the exclusive use of the Units to which they are appurtenant as may appear on the Plat or the Plans. Ownership of the Unit and the Limited Common Elements may not be divided, and any transfer of the Unit shall include a transfer of the Limited Common Elements appurtenant thereto.

4. General Common Elements: The General Common Elements consist of the entire Property other than Units and Limited Common Elements, including, without limitation, the following:

(a) all private roads, parking areas, landscaping, storm drainage and waste collection systems, and all other community facilities; and

(b) all other parts of the Property and all apparatus, installations and amenities existing on the Property for common use or necessary or convenient to the existence, maintenance or safety of the Property.

5. Limited Common Elements: Certain facilities shall constitute Limited Common Elements as defined herein, including the following as shown on the Plat or Plans:

(a) all foundations, structural floor systems (including second level flooring systems serving residential Units), structural roof systems and structural wall systems of residential Units;

(b) all exterior walls of residential Units, including without limitation exterior finishes and fixtures, but excluding interior finishes and fixtures within Units;

(c) all common partition walls between residential Units, excluding interior finishes and fixtures within Units;

- (d) all roofs of residential Units, including without limitation roofing materials and sheathing and all protrusions through the roofs;
- (e) all electrical apparatus (including without limitation heating, cooling and venting equipment), installed in or about the Unit beginning at the meter and extending to the terminus of the system within the Unit;
- (f) all utility services and connections, circuits, meters and junction boxes exclusively serving the Unit;
- (g) those portions of all water and sewage service lines exclusively serving the Unit;
- (h) all driveways, exterior doors and windows (including screens and storm doors and windows), shutters, balconies, loggia, decks, patios, terraces, canopies, awnings, stairways, sidewalks, porches, stoops, courtyards, gutters and downspouts of residential Units;
- (i) exterior light fixtures, mailboxes and HVAC equipment pads serving a residential Unit exclusively;
- (j) the open space upon the Land adjacent to the rear of a residential Unit and extending fifteen feet perpendicular from the Unit's outermost rear building line for the width of the Unit; and
- (k) such other elements as the Board of Directors may designate from time to time.

6. Share of Common Expenses: Except as otherwise specifically provided in this Master Deed or the Bylaws, each Unit shall be liable for a proportionate share of the Common Expenses, each such share being equal to the Unit Owner's share of General Common Elements. All expenses associated with the Limited Common Elements shall be equally divided between the Units to which such Limited Common Elements are appurtenant.

#### VIII. ASSOCIATION

The operation of the Condominium shall be by the Association, which shall fulfill its functions pursuant to the following provisions:

1. Charter and Bylaws: The Association has been or shall be incorporated under the charter in the form included in Exhibit D; and the Association has or shall adopt its bylaws in the form included in Exhibit D.
2. Administration: The charter and bylaws of the Association shall be the Bylaws of the Condominium, and the Association shall be administered in accordance with the Bylaws, as amended from time to time.
3. Membership: Each Unit Owner shall be a member of the Association.
4. Voting: Voting by the members of the Association in the affairs of the Condominium and the Association shall be on the basis of one vote per Unit.
5. Limitation upon Liability of Association: Notwithstanding the duty of the Association to maintain and repair parts of the Property, the Association shall not be liable for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the Property to be maintained and repaired by the Association, or caused by the negligence of other Owners or persons, nor for injury or damage caused by the elements or other Owners or persons.
6. Restraint upon Assignment of Shares in Assets: The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to his Unit.
7. Approval or Disapproval of Matters: Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such Unit Owner if in an Association meeting, unless the joinder of record Unit Owners is specifically required by this Master Deed.
8. Roster of Unit Owners and Mortgagees:
  - (a) Unit Owners: The Association shall maintain a roster of Unit Owners, as amended from time to time based on evidence of change of ownership furnished to the Association, which roster shall include the mailing addresses of Unit Owners. Unit Owners shall furnish a mailing address to the Association upon the request of the Association.
  - (b) Mortgagees: The Association shall maintain a roster of the Mortgagees, if any, of each Unit based upon information provided by the Mortgagees. A Mortgagee shall be stricken from the roster upon receipt by the Association of such a request from the Mortgagee or of a copy of a recorded release or satisfaction of the Mortgage. A Mortgagee, or a guarantor or insurer of a Mortgage, which provides written notice to the Secretary of the Association of its name and address, and name of the Owner and the address of the Unit to which its Mortgage is applicable, shall hereinafter be referred to as an "Eligible Mortgagee."

## IX. COMPLIANCE AND DEFAULT

Each Unit Owner shall be governed by and shall comply with the terms of the Master Deed, the Bylaws, and the Rules and Regulations, all as they may be amended from time to time. Failure by a Unit Owner to so comply shall entitle the Association or other Unit Owners to the following relief in addition to the remedies provided by the Condominium Act:

1. Damage: A Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of his guests, invitees, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include, but not be limited to, any increase in insurance rates occasioned by the use, misuse, occupancy or abandonment of any portion of the Property by a Unit Owner or any of his guests, invitees, employees, agents or lessees. A Unit Owner shall pay the Association the amount of any increase in its insurance premium occasioned by such use, misuse, occupancy or abandonment.

2. Costs and Attorneys' Fees: In any proceeding arising out of an alleged failure of a Unit Owner to comply with the terms of this Master Deed, the Bylaws or the Rules and Regulations adopted pursuant thereto, and said documents as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.

3. No Waiver of Rights: The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Act, this Master Deed, the Bylaws or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

## X. MAINTENANCE, ALTERATION & IMPROVEMENT

The responsibility for the maintenance of the Property and restrictions upon the alteration and improvement thereof shall be as follows:

### 1. General Common Elements:

(a) Maintenance and Operation: The maintenance and operation of the General Common Elements shall be the responsibility of the Association and shall be a Common Expense. No Unit Owner shall make any alterations in or repairs to the General Common Elements, without first obtaining approval in writing of the Board of Directors.

(b) Alteration and Improvement: After the completion of the improvements included in the Common Elements which are contemplated by this Master Deed, there shall be no major alteration or further improvement of the General Common Elements without prior approval in writing by the Owners having not less than sixty-seven percent of the votes in the affairs of the Association. Failure of an Owner to approve of or exercise his rights to use an alteration or improvement approved by at least sixty-seven percent of the other Owners shall not relieve such disapproving Owner of his respective share of the cost thereof.

### 2. Limited Common Elements:

(a) Maintenance and Operation: The maintenance and operation of Limited Common Elements shall be the responsibility of the Owners of the Units to which such Limited Common Elements are appurtenant. However, in the event a Unit Owner shall fail to maintain Limited Common Elements appurtenant to such Unit, the Association, after notice to the Unit Owner and expiration of a reasonable cure period, may undertake the required maintenance; and the costs thereof shall be treated in the manner of Assessments (as hereafter defined) against the Unit and Unit Owner.

(b) Alteration and Improvement: After the completion of the improvements included in the Common Elements which are contemplated by this Master Deed, there shall be no alteration or further improvement of the Limited Common Elements without prior approval in writing by the Owners having not less than sixty-seven percent of the interest in the Limited Common Element affected. Failure of an Owner to approve of an alteration or improvement approved as provided herein shall not relieve such disapproving Owner of his respective share of the cost thereof. Notwithstanding, the foregoing, no Unit Owner may undertake construction, repair, replacement, installation, alteration or improvement of Limited Common Elements, without first obtaining approval in writing of the Board of Directors.

### 3. Units:

(a) Maintenance and Operation: It shall be the responsibility of the Unit Owner to maintain, repair and replace at such Owner's expense all portions of the Owner's Unit.

(b) Alterations & Improvements: Unit Owners shall not make any alterations or improvements to any Unit, nor remove any portion thereof, nor make any additions thereto, nor do anything which would jeopardize the safety or soundness of the building of which the Unit is a part or impair any easement.

4. Incidental Damages: All incidental damage caused to any portions of the Property by work for which a party or parties are responsible hereunder shall promptly be repaired at the expense of such responsible party or parties.

## XI. ASSESSMENTS

The making and collection of assessments, fees, expenses, charges and dues from or against Unit Owners for Common Expenses (individually and collectively, "Assessments") shall be done pursuant to the Bylaws and subject to the following provisions:

1. Interest, Application of Payments: Assessments and installments thereon paid on or before ten days after the date when due shall not bear interest, but all sums not paid on or before ten days after the date when due shall bear interest at the highest formula rate of interest allowed to be charged in the State of Tennessee per annum from the date when due until paid. A Unit Owner shall be declared to be in default if the Assessments are not paid within twenty days after the due date. Any defaulting Unit Owner shall pay to the Association all costs and expenses incurred by the Association in enforcing its rights under this Master Deed, including but not limited to reasonable attorney fees. All payments upon account shall be first applied to interest and then to the Assessments first due.

2. Lien for Assessments: There shall be a lien against a Unit for default in the payment of Assessments which shall also secure reasonable attorneys' fees and other costs incurred by the Association incident to the collection of such Assessments or enforcement of such lien. Such lien shall be subordinate only to the lien of a first Mortgage recorded prior to the time of recording of the claim of lien for such unpaid Assessments; and the sale or transfer of any Unit pursuant to a foreclosure of such first Mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which becomes due prior to such sale or transfer. No such sale or transfer shall relieve such Unit from liability for any Assessments thereafter becoming due or from the lien thereof. Each Assessment, together with interest, costs and attorney fees, shall also be the personal obligation of the Owner of the Unit at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by such successors; but in all events, even after a transfer of title, the Association shall be entitled to enforce the lien for Assessments against the Unit to which such lien is applicable.

3. Priorities, Enforcement, Remedies: When a notice of Assessments has been recorded, such Assessments shall constitute a lien on each respective Unit prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of record at the time such notice is recorded.

For the purpose of more effectively securing the lien for Assessments and any fees and costs incurred in enforcing the collection of same, all as provided above, (the "Secured Charges") and in consideration of the matters set forth herein, the acceptance by each Owner of an interest in the title to a Unit, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, each Owner, for himself, his personal representatives, heirs, successors and assigns hereby grants, bargains, sells and conveys unto Eddie E. Holbrook, Jr., a resident of Grainger County, Tennessee, his successors and assigns (hereinafter "Trustee"), such Owner's interest in his respective Unit or Units together with all the estate, title and interest therein, in trust, for the purpose of securing the lien of the Secured Charges.

By accepting an interest in the title in any Unit in the Condominium, each Owner hereby promises, covenants and agrees (i) to pay the Secured Charges when they shall become due, as provided herein; (ii) to pay, discharge, and remove any and all liens which may hereafter be placed against such Owner's Unit as the same becomes due and payable, and which liens shall adversely affect the lien of the Secured Charges or enforcement of the terms and provisions hereof; (iii) to keep such Owner's Unit or Units in good repair and condition, and (iv) to abide by all the terms and provisions of this Master Deed, the Bylaws, and the Rules and Regulations adopted by the Association, as the same may be amended from time to time; provided that in the event any Owner fails to do any of these things, then the Trustee or the Association may do any or all of these things, and the amounts so paid shall bear interest at the highest rate allowed by law, and said amounts shall become part of the Secured Charges.

If an Owner shall pay the Secured Charges when due, then this trust conveyance shall be of no further force or effect with respect to such Owner's Unit. If the Secured Charges with respect to any Unit are not paid promptly when due, then this trust conveyance shall remain in full force and effect, and the Trustee is hereby authorized and empowered, upon giving twenty days notice by three publications in any newspaper, daily or weekly, published in Grainger County, Tennessee, or any county which borders Grainger County, Tennessee and is circulated in Grainger County, to sell said Unit at the front door of the courthouse for Grainger County, Tennessee to the highest bidder for cash, at public outcry, free from the equity of redemption, the statutory right of redemption, homestead, dower, and all exemptions of every kind and nature, each of which is hereby expressly waived by each Owner; and the Trustee is authorized and empowered to execute and deliver a deed to the purchaser; provided, that the Association shall also be allowed to bid on the sale of any Unit in such a proceeding.

Notwithstanding the foregoing, the Association may, at any time, after default in the payment of any of the Secured Charges, enter and take possession of the Unit and shall only be required to account for the net rents actually received by it. It is further agreed that, in the event the Association fails, before instructing the Trustee to sell said Unit as provided herein, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to it by the Trustee of a deed for said Unit; and said purchaser shall be allowed to recover all costs and expenses, including its attorneys' fees, which it incurs in removing any person from possession of said Unit.

In case of a sale under this Section 3 of Article XI, the proceeds will be applied by the Trustee as follows:

(a) first, to the payment of all costs, charges and expenses of executing this conveyance and enforcing said lien as herein provided, including reasonable attorneys' fees and expenses incurred for instituting or defending any litigation which may arise on account of the execution of this conveyance or the enforcement of said lien;

(b) second, to the payment of all taxes that may be unpaid with respect to the Unit;

(c) third, to the payment of all unpaid Assessments with respect to the Unit; and

- (d) fourth, the residue, if any, to the Owner of the Unit, his order, representatives or assigns.

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

The Association shall also be empowered to file suit to cause a judicial foreclosure of the lien described above and to recover a money judgment for unpaid Common Expenses, dues, rent and attorney fees. If such suit is only to recover a money judgment, it shall be maintainable without foreclosing or waiving the lien securing the same. The enumeration of one or more remedies set forth herein shall not limit or prevent the Association from pursuing and enforcing any other remedy it may have in either law or equity against a Unit Owner.

The Board of Directors may suspend the voting rights of a member who is in default in payment of any Assessments.

4. Rental Subsequent to Foreclosure: After foreclosure of a lien for Assessments, the Owner or occupant of the foreclosed Unit shall be required to pay a reasonable rental for the Unit until the foreclosed Unit is vacated.

5. Notice to Mortgagee: The Mortgagee of any Unit which has notified the Association of the existence of its Mortgage and which has given the Association an address to which notices may be sent shall be notified of any lien filed against the Unit for default of the Owner of such Unit with respect to nonpayment of such Owner's Assessments or any other charges against the Unit. Such Mortgagee shall be entitled but shall not be obligated to cure the default of the Unit Owner.

## XII. INSURANCE

Insurance (other than title insurance) which shall be carried upon the Property shall be governed by the following provisions:

1. Authority to Purchase; Named Insured: Except as may be provided below, all insurance policies upon the Property shall be purchased by the Association, and the named insured shall be the Association, individually, and as agent for the Unit Owners without naming each Owner and his Mortgagee, if any. All policies shall be written with a company licensed to do business in Tennessee and having a rating of Class B or better by Best's Insurance Reports (or a comparable rating by another service). Provision shall be made for the issuance of the mortgage endorsements and memoranda of insurance to the Mortgagees of Unit Owners. Such policies shall provide that payments for losses thereunder by the insurer shall be made either to the Association or, if deemed desirable by the Board of Directors, to a commercial bank regulated by the Federal Deposit Insurance Corporation in Tennessee having trust powers, the selection of which shall be the responsibility of the Board of Directors (either, an "Insurance Trustee"); and all policies and endorsements shall be deposited with the Insurance Trustee. **Unit Owners shall obtain insurance coverage at their own expense upon their own personal property and for their personal liability.**

2. Copies of Policies: A copy of each insurance policy and of all endorsements thereon shall be furnished by the Association to each Mortgagee included in the Mortgagee roster upon the request of such Mortgagee.

3. Coverage:

(a) Casualty: All buildings and improvements upon the Property and all personal property included in the Common Elements shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, all as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against:

(1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and

(2) Such other risks as from time to time are customarily covered with respect to buildings similar in construction, location and use as the buildings on the Property, including but not limited to vandalism and malicious mischief.

(b) Public Liability: The Association shall maintain comprehensive general liability insurance with contractual liability endorsements, in such amounts and with such coverage as shall be required by the Board of Directors, but no less than \$2,000,000.00 per occurrence, including, but not limited to, hired automobile and non-owned automobile coverage with cross-liability endorsements to cover liabilities of the Unit Owners as a group.

(c) Worker's Compensation: The Association shall maintain such workers' compensation insurance as may be necessary to meet the requirements of law.

(d) Other Insurance: The Association shall maintain such other insurance as the Board of Directors shall determine from time to time to be desirable.

4. Premiums: Premiums of insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

5. Insurance Trustee; Share of Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners and their Mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee, subject to the provisions hereof. The Insurance Trustee shall receive such

insurance proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares:

(a) General Common Elements: An undivided share of such proceeds on account of damage to General Common Elements shall be allocated to the Unit Owners according to their shares of the General Common Elements.

(b) Units and Limited Common Elements: Proceeds on account of damage to Units and Limited Common Elements shall be held for the Owners' damaged Units or Limited Common Elements in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

(c) Mortgagees: In the event a Mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and Unit Owner as their interests may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to a Unit Owner and Mortgagee pursuant to the provisions of this Master Deed.

6. Association as Agent: The Association is hereby irrevocably appointed agent for each Unit Owner, Mortgagee, and holder of any other lien upon a Unit and for each owner of any other interest in the Property to adjust all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon the payment of claims.

7. Waiver of Subrogation: All insurance purchased by the Association shall include a clause waiving any subrogation rights that the insurer might have against Unit Owners within the Condominium.

8. Insurance of Unit Owner: Each Unit Owner may obtain additional insurance at his own expense; provided, however, that no Unit Owner shall be entitled to exercise his right to maintain insurance coverage which would effectively decrease the amount which the Association, on behalf of all Unit Owners and their Mortgagees, may realize under any insurance policy which the Association may have in force on the Property at any particular time. The owner of any policy covering a portion of the Property, other than personal property belonging to the Unit Owner, shall file a copy of such policy with the Association within thirty days after the purchase of such insurance.

9. Responsibilities of Insurance Trustee:

(a) All insurance policies purchased by the Association shall provide that proceeds covering property losses shall be paid to the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of the policies or for the failure to collect any insurance proceeds.

(b) The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold them in trust for the benefit of the Unit Owners and their Mortgagees, as provided above.

(c) Proceeds received by the Insurance Trustee shall be distributed as follows:

(1) All expenses of the Insurance Trustee shall be paid first.

(2) If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be expended as provided in Article XIII. Any proceeds remaining after paying such costs shall be distributed to the beneficial owners, with remittances to Unit Owners and their Mortgagees to be made payable jointly. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

(3) If it is determined as provided in Article XIII that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, with remittances to Unit Owners and their Mortgagees to be made payable jointly. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

(4) The Insurance Trustee may rely upon a certificate of the Association as to whether the damaged property is to be reconstructed or repaired. In making a distribution to Unit Owners and their Mortgagees, the Insurance Trustee may rely upon a certificate of the Association as to the names of the Unit Owners, their Mortgagees, and their respective shares of the distribution.

### XIII. RECONSTRUCTION OR REPAIR OF DAMAGED PROPERTY

1. Determination to Reconstruct or Repair: If any part of the Property shall be damaged by casualty, its reconstruction or repair shall be determined in the following manner:

(a) General Common Elements: If the damage occurs to the General Common Elements, they shall be reconstructed or repaired unless it is determined that the Condominium shall be terminated.

(b) Units or Limited Common Elements: If the damage occurs to any Limited Common Elements or to any buildings containing Units, but the Board of Directors determines that Units to which fifty percent or less of the General Common Elements are appurtenant are thereby rendered untenable, the damaged property shall be reconstructed or repaired, unless within sixty days after the casualty it is decided (in the manner provided in Article XV) that the Condominium shall be terminated. If Units to

which more than fifty percent of the General Common Elements are appurtenant are found by the Board of Directors to be untenable due to the casualty, the Condominium will be subject to termination as provided herein and the damaged property will not be reconstructed or repaired, unless within sixty days after the casualty, the Unit Owners of at least seventy-five percent of the General Common Elements agree in writing to such reconstruction or repair. No Mortgagee shall have any right to participate in the determination as to whether the damaged Property shall be reconstructed or repaired.

2. Plans and Specifications: Any reconstruction or repair must be substantially in accordance with the Plans; or if not, then according to plans and specifications approved by the Board of Directors and, if the damaged property is a building containing Units, by unanimous approval of the Owners of the damaged Units and the Unit Owners of not less than sixty-seven percent of the General Common Elements, which approval shall not be unreasonably withheld.

3. Responsibility for Repairs: The affected Owners shall be responsible for reconstruction and repair after casualty for damages to those parts of Units or Limited Common Elements for which the responsibility of maintenance and repair is that of the Unit Owners. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

4. Estimates of Costs: Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

5. Assessments: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against the Unit Owners who own the damaged Units or Limited Common Elements, and against all Unit Owners in the case of damage to General Common Elements, in sufficient amounts to provide funds to pay the estimated costs. Additional Assessments may be made at any time during or following the completion of construction. Such Assessments against Unit Owners for damage to Units or Limited Common Elements shall be in proportion to the cost of reconstruction and repair of their respective Units or Limited Common Elements. Such Assessments on account of damage to General Common Elements shall be in proportion to the Unit Owner's share in the General Common Elements. If the amount of the estimated costs of reconstruction and repair for which the Association is responsible exceeds \$5,000.00, the sums paid upon Assessments to meet such costs shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such Assessments and disburse them in payment of the costs of reconstruction and repair.

6. Deductible Provision: The funds necessary to cover any deductible amount under an insurance policy against which a claim is made shall be a Common Expense.

7. Construction Funds: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from Assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(a) Unit Owner: The portion of insurance proceeds representing damage, the reconstruction and repair of which is the responsibility of the Unit Owner, shall be paid by the Insurance Trustee to the Unit Owner or, if there is a Mortgagee endorsement, to the Unit Owner and the Mortgagee jointly, who may use such proceeds as they may be advised; provided that, unless the Condominium is terminated as set forth in this Master Deed, the Unit Owner or Mortgagee shall be obligated to use the insurance proceeds to reconstruct or repair the Limited Common Elements appurtenant to such Owner's Unit to their condition prior to the casualty or loss.

(b) Association:

(1) Minor Damage: If the estimated costs of reconstruction and repair, the responsibility of which is that of the Association, is \$5,000.00 or less ("Minor Damage"), then the funds to reconstruct or repair shall be disbursed by the Insurance Trustee in payment of such costs upon the request of the Board of Directors; provided, however, that upon request to the Association by a Mortgagee which is a beneficiary of an insurance policy (the proceeds of which are included in the construction funds), such funds shall be disbursed in the manner hereafter provided for the reconstruction and repair of Major Damage.

(2) Major Damage: If the estimated costs of reconstruction and repair, the responsibility of which is that of the Association, exceeds \$5,000.00 ("Major Damage"), then the funds to reconstruct or repair shall be disbursed by the Insurance Trustee in payment of such costs in the manner required by the Board of Directors and, in the event the Board of Directors shall hire an architect in connection with such work, upon approval of an architect qualified to practice in the State of Tennessee and employed by the Association to supervise the work.

(c) Surplus: It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable to any Mortgagee.

8. Eminent Domain: The taking of a portion of a Unit or of the Common Elements by eminent domain (whether effected by a final judgment or a conveyance in lieu thereof) shall be deemed to be a casualty. The awards of such taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee. In the event of a Unit Owners' failure to do so, in the discretion of the Board of Directors, special Assessments shall be made against the defaulting Unit Owners in the amounts of their awards, or the amounts of such awards shall be set off against the sums thereafter made payable to such Owners. The proceeds of

the awards shall be distributed or used in the manner heretofore provided for insurance proceeds except that when the Condominium is not to be terminated and one or more Units are taken in whole or in part, the taking shall have the following effects:

(a) Unit Reduced but Tenatable: If the taking reduces the size of a Unit and the remaining portion of a Unit can be tenatable, the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium:

(1) The Unit shall be made tenatable. If the costs of such work exceed the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.

(2) The balance of the award, if any, shall be distributed to the Owner of the Unit and each Mortgagee of the Unit included in the Mortgagee roster, the remittance being payable to the Owner and Mortgagees jointly.

(3) There shall be no reduction or other adjustment in the share in the General Common Elements appurtenant to the Unit.

(b) Unit Made Untenatable: If the taking destroys or so reduces the size of a Unit that it cannot be made tenatable, the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium:

(1) The market value of such Unit immediately prior to the taking shall be paid to the Owner of the Unit and each Mortgagee of a Unit included in the Mortgagee roster, the remittance being payable to the Owner and Mortgagees jointly.

(2) The remaining portion of such Unit, if any, shall become a part of the General Common Elements and shall be placed in condition for use by all of the Unit Owners in the manner approved by the Board of Directors; provided, if the cost of such work shall exceed the balance of the funds from the award for the taking, such work shall be approved in the manner elsewhere required for further improvement of the General Common Elements.

(3) The shares in the General Common Elements appurtenant to Units which continue as part of the Condominium shall be adjusted to distribute the ownership of the General Common Elements equally among the reduced number of Units.

(4) If the amount of the award for the taking is not sufficient to pay the market value of the condemned Unit to the Owner and to condition the remaining portion of the Unit for use as a part of the General Common Elements, the additional funds required for such purposes shall be raised by Assessments as for Common Expenses against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. Such Assessments shall be made in proportion to the shares affected by the taking.

(c) Amendment of Master Deed: The changes in Units, in the Common Elements, in the ownership of the Common Elements, and in shares of liability for Common Expenses which are effected by eminent domain shall be evidenced by an amendment to the Master Deed; and the Chairman of the Board of Directors shall be and hereby is appointed the true and lawful attorney-in-fact for each Unit Owner in such instance for the purpose of approving the amendment.

#### XIV. AMENDMENTS

Except as provided otherwise herein, this Master Deed may be amended in the following manner:

1. Notice: Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

2. Resolution and Adoption: An amendment to this Master Deed may be proposed by resolution of a simple majority of either the Board of Directors or the members of the Association. Except as elsewhere provided, approval of the proposed amendment must be by not less than sixty-seven percent of the votes of the entire membership of the Association.

3. Proviso: No amendment shall discriminate against any Unit Owner or against any Unit or class or group of Units unless the Unit Owners so affected shall consent; and no amendment shall change any Unit or its share of the General Common Elements appurtenant to it, or increase a Unit Owner's share of the General Common Elements, unless the record Owner of the Unit and all Mortgagees or record owners of liens thereon shall join in the execution of the amendment.

4. Execution and Recording: Upon approval of the amendment, the Board of Directors shall cause the President of the Association to execute the same on behalf of the Association. The amendment shall be effective when a copy thereof, certified by the President of the Association as having been duly adopted by the Unit Owners and Mortgagees, is recorded in the Register's Office for Grainger County, Tennessee.

#### XV. TERMINATION

The Condominium may be terminated in the following manner, as provided by the Condominium Act:

1. Destruction: In the event of a casualty to or a taking of Units or Common Elements which renders untenatable more than fifty percent of the Units to which the General Common Elements are appurtenant, a special meeting of the Members of the

Association shall be called for the purpose of determining whether to reconstruct or repair as provided herein, or to terminate the Condominium. The decision to terminate shall require approval of all of the Unit Owners and Mortgagees.

2. Agreement: The Condominium may be terminated at any time by the approval in writing of all of the Unit Owners and Mortgagees.

3. Option to Purchase:

(a) If the proposed termination is submitted to a meeting of the Unit Owners and the notice of such meeting includes notification of the proposed termination, and such termination is approved by the Owners of not less than seventy-five percent of the General Common Elements and their corresponding Mortgagees within thirty days after the date of said meeting, then the approving Unit Owners shall have the option to buy all of the Units of the other Unit Owners during the period ending on the sixtieth day from the date of such meeting.

(b) The option described in subparagraph (a) hereinabove shall be exercised by delivery or mailing by certified mail to each of the record Owners of Units to be purchased an offer to purchase signed by the record Owners who will participate in the purchase. Such offer shall indicate which Units will be purchased by the participating Owners and shall offer to purchase all of the Units owned by dissenting or abstaining Owners, but the offer shall effect a separate contract between each seller and his purchaser.

(c) The purchase price for each Unit shall be the fair market value determined by agreement between the seller and purchaser within thirty days from the delivery or mailing of such offer. In the absence of agreement, the sales price shall be determined by qualified appraisers, one each selected by the seller and purchaser, who shall base their determination upon an average of their appraisals of the Unit. The expense of each appraisal shall be borne by the party selecting such appraiser. The purchase price shall be paid in cash, and the sale shall be closed within ten days following the determination of the purchase price.

4. Certificate: The termination of the Condominium in any of the foregoing manners shall be evidenced by a Certificate of the Association executed by the President and Secretary certifying as to facts effecting the termination, which Certificate shall become effective upon being recorded in the Register's Office for Grainger County, Tennessee.

5. Shares of Owners After Termination: After termination of the Condominium, the Unit Owners shall own the Property and all assets of the Association as tenants-in-common in undivided shares, and their respective Mortgagees and lienors shall have Mortgages and liens upon the respective undivided shares of the Unit Owners. Such undivided shares of the Unit Owners shall be the same as the undivided shares in the General Common Elements appurtenant to the Units prior to the termination.

6. Amendment: This section concerning termination cannot be amended without consent of all Unit Owners and Mortgagees.

#### XVI. ALTERATION AND TRANSFER OF INTEREST

The common interest and easements appurtenant to each Unit shall have a permanent character, shall not be separated from such Units, and shall not be altered without the consent of all Unit Owners affected thereby, such consent to be represented in a duly recorded amendment to this Master Deed. The Common Elements and appurtenant easements shall be deemed conveyed or encumbered with such Units even though not expressly mentioned or described in the conveyance or other instrument. The Common Elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided in the Condominium Act.

#### XVII. SPECIAL PROVISIONS RELATED TO ELIGIBLE MORTGAGEES

1. Notice: The Secretary of the Association, or such other person or entity designated by the Board of Directors, shall give the Eligible Mortgagee, and guarantor of the Mortgage appearing in the roster of Mortgagees, on any Unit timely written notice of the following:

(a) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its Mortgage;

(b) any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the Mortgage;

(c) a lapse, cancellation or material modification of any insurance policy maintained by the Association; and

(d) any proposed action that requires the consent of a specified percentage of Mortgagees.

2. Approval of Material Amendments: In addition to the requirements for approval of amendments to this Master Deed elsewhere provided herein, amendments to this Master Deed of a material adverse nature to Mortgagees must be agreed to by Eligible Mortgagees representing at least fifty-one percent of the votes of Unit estates that are subject to Mortgages held by Eligible Mortgagees. A change in any of the provisions governing the following would be considered of a material adverse nature:

(a) voting rights;

(b) increases in Assessments that raise the previously assessed amount by more than twenty-five percent;

- (c) priority of Assessments liens;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common Elements or rights to their use;
- (f) redefinition of Unit boundaries;
- (g) convertibility of Units into Common Elements or *vice versa*;
- (h) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (i) hazard or fidelity insurance requirements;
- (j) imposition of any restrictions on the leasing of Units;
- (k) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (l) if the Condominium consists of fifty or more Units, a decision by the Association to establish self-management if professional management had been required by the Master Deed or Bylaws or by an Eligible Mortgagee;
- (m) restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in the Master Deed or Bylaws; or
- (n) any provisions that expressly affect Mortgage holders, insurers or guarantors .

3. Implied Approval: Implied approval of an Eligible Mortgagee for any amendment to this Master Deed or the Bylaws will be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for the amendment within sixty days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, return receipt requested.

#### XVIII. DEVELOPER'S RESERVED RIGHTS

1. Developer Control: Notwithstanding any provisions of this Master Deed or the Bylaws to the contrary, Developer agrees and shall have the right to retain control of the Association for a period commencing upon the date of the initial recordation of this Master Deed in the Register's Office for Grainger County, Tennessee, and ending upon the earlier of (i) the day which is four months after the date on which at least fifty of the residential Units have been conveyed by Developer to initial purchasers as evidenced by the records of the Register's Office for Grainger County, Tennessee, or (ii) the day which is five years after the first conveyance by Developer of a residential Unit to an initial purchaser as evidenced by the records of the Register's Office for Grainger County, Tennessee, (the "Developer Control Period"); provided, however, that Developer may elect in its sole discretion to terminate the Developer Control Period at any earlier date by providing written notice of such election to the Board of Directors.

2. Unit Ownership: Developer, its successors and assigns, shall be the Owner of the fee interest in each Unit until initially sold to a purchaser. Developer, its successors and assigns, retains the right to enter into leases with any third parties for the occupancy of any of the Units owned by Developer, its successors or assigns.

3. Reserved Easements: In addition to any other rights reserved to Developer herein, Developer, for itself, its successors and assigns, hereby reserves during the Developer Control Period the following rights and easements:

(a) The Developer reserves the right to utilize any Units owned or leased by it and Common Elements for sales offices, model units and administrative offices. The Developer reserves the right to relocate the same within the Property from time to time. The furnishings thereof may also be moved and relocated at the Developer's discretion. The Developer further reserves an easement for access to and use of the Common Elements and to post signs which advertise the availability of Units for sale or lease.

(b) The Developer reserves the right of entry upon the Property or any portion thereof, including any Unit and its appurtenant Limited Common Elements after reasonable notice to the Owner, in the performance of its work to develop the Condominium. In case of emergency, such entry shall be immediate whether or not the Unit Owner has received notice, consents or is present at such time. Until the expiration of the warranty period, the Developer, its agents and assigns shall be permitted such entry in order to perform Developer's warranty work.

(c) The Developer reserves the right to perform repairs, construction, renovations, restorations and replacements upon the General Common Elements without the prior approval of the Association.

(d) The Developer reserves an easement for the movement and storage of building materials across and upon the General Common Elements.

(e) The Developer reserves the right to change the interior design and arrangement of any Unit and to alter the boundaries between Units, as long as Developer owns the Units so altered, and has obtained the prior approval of the Mortgagees, as necessary. However, no such modification shall alter the total number of Units or the boundaries of the General Common Elements without an amendment of this Master Deed. If such amendment is required by this Master Deed, the Bylaws or the Condominium Act as

a result of the Developer's modifications, the Developer is authorized to execute and record same. If this Master Deed is so amended, appropriate *pro rata* adjustments will be effected in the percentage ownership of General Common Elements and the percentage burden of Common Expenses of all Unit Owners.

(f) The Developer reserves the right to amend the Master Deed and the Bylaws, without necessity of approval of the Unit Owners, to conform to applicable laws and governmental regulations, and requirements of lending institutions and agencies, including without limitation HUD, FNMA and FHLMC, and to correct typographical or other errors of a non-material nature herein.

(g) The Developer reserves the right to complete the improvements shown upon the Plat.

(h) The Developer reserves the right to withdraw and grant easements to public utilities, government entities, riparian owners and any other parties in order to effectuate the development plan for the Condominium.

(i) The Developer reserves the right to unilaterally amend the Master Deed to add land to the Condominium, which alters only the boundaries of the General Common Elements and which results in no material effect upon the Common Expenses. (After expiration of the Developer Control Period, this right may be exercised by quit claim of the additional land to the Association.)

(j) The Developer reserves the right to grant to the property owners of the Grainger's Landing Subdivision non-exclusive permanent easements for the use and enjoyment of the private roads, parking areas, Marina Unit, boat ramp, club house, pool and tennis court as shown on the Plat and as may be constructed, all with the same rights and privileges as a guest of a Unit Owner in good standing but subject to the provisions of this Master Deed, the Bylaws and the Rules and Regulations applicable to their proper use.

(k) The Developer reserves the right to grant for the benefit of Developer, its agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over, under and across the Property (excluding Units and Condominium buildings) for the purpose of accessing Developer's agricultural rights in and to that certain land lying between the Property and the waters of Cherokee Lake. Said easement shall include the right to access said agricultural rights at anytime and from time to time by pedestrian and vehicular traffic, including trucks and heavy equipment; provided, that Developer agrees that it shall not exercise its rights in an unreasonable manner and that Developer will further make any repairs to any part of the Property which is damaged as a result of its exercise of its rights pursuant to such easement. Said easement shall run with the land as a perpetual benefit to Developer and as a burden to the Property.

4. Expenses: During the Developer Control Period, the expenses of maintenance, operation, repair or replacement, and all other expenses, of Developer under the easement documents described on Exhibit A hereto shall be reimbursed by the Association as Common Expenses or from the working capital fund established in accordance with the Bylaws.

5. Owners' Waiver: It is acknowledged and agreed by each Unit Owner that the Developer, in exercising its rights herein reserved, may cause certain noises, dust, debris and other temporary nuisance situations to occur which are the result of construction activities; and each Owner, by acceptance of a deed for his or her Unit, does waive, release and relinquish any and all rights, demands, claims and causes of action as a result of such temporary nuisances. Subject to Developer's right to amend this Master Deed and the improvements contemplated herein, each Unit Owner also acknowledges and agrees that all of the roads, amenities and facilities contemplated by this Master Deed may not be completed at the time a Unit is initially conveyed by Developer to an Owner, and that no person shall have any right against Developer, its successors or assigns because of same.

IN WITNESS WHEREOF, the Developer has executed this Master Deed as of the date first above written.

BECS, a/k/a BECS General Partnership,  
a Tennessee general partnership

By: \_\_\_\_\_  
Bruce Van Horn,  
General Partner

By: \_\_\_\_\_  
Eddie E. Holbrook, Jr.,  
General Partner

**Also recorded as part of Master Deed – Charter and Bylaws of The Point At Grainger's Landing Villa Owners' Association**

