

APPENDIX A – APPLICANT’S PROPOSAL

Rarity Pointe – Development Plan Summary

Rarity Communities, Inc., and LTR Properties, Inc., (the developer) is currently planning the development of approximately 660 acres in the Glendale area of Loudon County, Tennessee. The site is located approximately 5 miles east of Lenoir City, Tennessee and approximately 7 miles west of Maryville, Tennessee on State Highway 321 in Loudon County. Proximity to Interstate I-75 and I-40 is approximately 15 minutes driving distance or 11.5 miles, allowing easy access to local area residents. The site is centrally located in the Knoxville metropolitan service area (9-county MSA) with an approximate 30-minute drive to all major area services and attractions including major healthcare, air transportation and shopping. Additionally, the Knoxville MSA is positioned within 500 miles of more than 113 major cities comprising nearly 50 percent of the current U.S. population. As of July 31 2001, Rarity Communities, Inc., has recorded approximately 26,000 visitors and inquiries through its visitor information center at Rarity Bay. Total inquiries have increased annually by 75% – 100%. Visitor/inquiry analysis suggests the demand for a second-home and resort/rental opportunity with adjacent marina services is escalating. Additionally, the area has continued to attract the interest of active adult retirees as evidenced by the success of Tellico Village and Rarity Bay, also located on the Tellico Reservoir.

The proposed plan of development for Rarity Pointe includes approximately 332 acres owned by the developer with no significant deed restrictions. Dwelling units for this parcel are planned as residential, with open space and park areas around golf views.

An additional 219-acre parcel, currently under the direction of the Tellico Reservoir Development Agency (TRDA), is owned by the developer. The site development plan for this parcel adheres to the zoning restrictions as set forth under the Commercial Recreation guidelines adopted by TRDA and recorded in document TVA 60000A. Dwelling units planned on this parcel by the developer will be managed under the deed restrictions as set forth in the "***Rarity Pointe Supplemental Declaration of Conditions, Covenants and Restrictions, for Phase I.***" (Included Attachment A.) In addition, dwelling units located in the approximate 219- acre Commercial Recreation zoning "district" of the community will have the option to be managed under the "***Rarity Pointe Rental Management Program***" (Rental Management Agreement, Included Attachment B) The general content of these documents restrict owners from permanent use of their dwelling and give exclusive right to the developer operated "Rental Management Company" to market, promote and rent said unit as part of the rental management program. Additionally, the developer will own and operate guest cabins, cottages and lodge accommodations within the rental management program.

The master development plan for Rarity Pointe assumes the acquisition of approximately 115 acres currently held by the Tennessee Valley Authority (TVA) as public land. The developer has submitted a proposal to acquire this land from TVA. This parcel is currently land locked by parcels owned or under contract by the developer. The acquisition of this parcel enables the developer to plan approximately 1,200 dwelling units over an approximate total of 660 acres achieving a planned unit development (PUD)

density of less than 2 dwelling units per acre, providing for additional open space, park areas and low to mid-rise condominium design and construction. In the overall site planning and golf course routing design, the additional acres enhance the value of the recreational amenities by keeping golf course routing away from the shoreline and giving way to less crowding of amenity structures, thus increasing the overall value of each unit/lot parcel.

The approximate 660-acre Rarity Pointe master concept plan offers a recreational resort community offering both residential and rental use opportunities. Recreational and leisure amenities include a full-service marina including dry storage, and restaurant with public use rights; an 18-hole, tournament-play golf course and extensive practice facility; a golf clubhouse with on-site stay and play guest accommodations; a full-service spa and lodge site with in-lodge guest accommodations; meeting and banquet facilities; both casual and fine dining; an infinity pool, gardens and outdoor chapel; outdoor lighted tennis courts; walking trails and park areas; and planned/controlled access to Tellico Lake. Private individual boat docks will not be permitted at the shoreline thus diminishing impact on water quality. The entrance will be gated and employ 24-hour gatehouse attendants. Guest check-in will occur at the retail/commercial site at the highway 321 entrance.

The site presents dramatic topography, affording aesthetic view corridors for much of the planned development. Natural resources include a wide-variety of mature hardwood trees that have been incorporated into the community design guidelines for

Rarity Pointe Commercial Recreation and Residential Development on Tellico Reservoir

preservation. These existing trees are part of an overall landscaping program to provide tree clustering throughout the site development. Extensive water views and lake front buffer areas have been planned to provide walking access at the shoreline in accordance with the Shoreline Management Plan currently adopted by TVA.

An English Country Manor and English Countryside architectural design theme has been incorporated into the Lodge and Golf Club facilities to set the tone for all future development. The character of the English Manor House architectural design is chosen to enhance the natural environment of the site with the use of wood and stone both on interiors and exteriors of all vertical structures. The construction of recreational and leisure amenities, as well as housing and resort accommodations will be managed under these guidelines.

Rarity Pointe will offer a mix of residential and rental opportunities to include: low-rise and mid-rise condominiums; cottage-style cabins; twin homes (duplexes); attached and detached villas; single-family estate homes; custom home sites; and overnight suite accommodations. A highway retail and commercial site is planned adjacent to highway 321 at the entrance to Rarity Pointe to accommodate owners and guests in Rarity Pointe, as well as local area residents and traffic along highway 321. An information center, visitor and guest check-in and general store would be located in this center outside the gated entrance to the community.

Rental management and property services will operate permanently on site at the lodge facility to provide a full-service rental and guest management program to all

residents, tenants, guests and visitors. Use rights for all recreational and leisure amenities are incorporated in the "Rental Management Agreement" draft. The resort rental offering and recreational use rights will be marketed on a local, regional and national basis. Maintenance and housekeeping for the rental program will be located in the Lodge facility.

Recreational use rights are incorporated into the Rarity Pointe Membership Plan. The membership plan presents varied levels of membership based on community involvement. Property owner members, resort club members and public access members and related use rights are defined in the Rarity Pointe Rules and Regulations for the Rarity Pointe Club. A "community access" membership classification for local area residents will be available for approximately \$250.00 annually offering golf, spa services and fitness programs, access to all dining facilities and attendance at community events.

Rarity Pointe is being master-planned and developed by LTR Properties, Inc./Rarity Communities, Inc., under the direction of Michael L. Ross as president. Currently responsible for the successful development of Rarity Bay on Tellico Lake, the Rarity Communities is in the design stages for much of the product offering and rental accommodations, as well as the design and construction management of all recreational and leisure amenities. Additionally, the company will manage the overall development design guidelines and design review process for Rarity Pointe as well as the rental management and resort operations. Rarity Communities is currently positioned "in-house" with staffing and systems in place to effectively manage the financial reporting, total club operations, site development, association management, community

maintenance, sales and marketing and the vertical construction operations. A critical path time line and financial operating plan has been drafted by senior management to achieve key response dates for Rarity Pointe development assuming official start-up in August of 2002.

Alternative Development Strategy

Rarity Communities, Inc., has launched a pre-sales program for Phase I development. The pre-sales program allows for non-binding reservations to be taken from interested buyers on site located on the Commercial Recreation zoned parcel. As of July 31, 2002, the company has obtained 56 reservations. These interested buyers will receive copies of all Conditions, Covenants and Restrictions for Phase I, in addition to membership and rental program information. Lot/parcel sizes have been preliminarily planned to assume the acquisition of the additional 115 acres.

In that, TVA would take no action on the proposal by the developer to acquire the 115-acre tract, dwelling unit size and values would need change to achieve the total number of units and unit values necessary to produce the projected gross revenues required to fund the existing golf course design and construction of planned amenity structures. Alternatives would include planning high-rise condominium buildings to achieve a higher unit count vertically, reducing the size of one-story unit lots, thus decreasing the overall value per unit resulting in need for more than 1,200 units. (i.e.) 1,600 units on 548 acres would increase the overall density to 3 dwelling units per acre, thus limiting open space and park area. Additionally, the revised routing plan for the

golf course would not allow for tournament play where typically the golf club house is positioned at the number 1 and 18 hole. The current condition of the 115-acre tract left undeveloped would detract from the overall "place-making" of the community, leaving the land unmanaged and giving way to trespassers to Rarity Pointe.

The Professional Team of Consultants

Tunnell, Spangler and Associates, Inc.
Land planning and Architectural Design
Atlanta, Georgia

Sterling Engineering, Inc.
Civil and Professional Engineering
Maryville, Tennessee

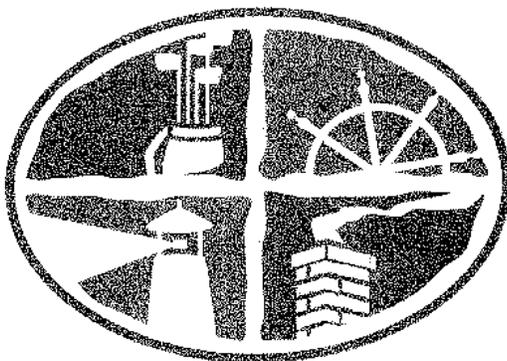
Law Offices
Epstein, Becker and Green
Atlanta, Georgia

Robert Cupp, Golf Course Architect
Golf Course Routing Design
Atlanta, Georgia

Group One Design
Interior and Architectural Design
Knoxville, Tennessee

Vaughn and Melton
Professional Engineers
Knoxville Tennessee





Rarity Pointe

PLAY LIKE A CHAMPION

Another Fine Living Experience Offered by Rarity Communities, Inc.

Rarity Pointe Commercial Recreation and
Residential Development on Tellico Reservoir

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

RARITY POINTE

STATE OF TENNESSEE LOUDON COUNTY REGISTER'S OFFICE
THIS INSTRUMENT RECEIVED AT 2:19 O'CLOCK P. M. OF THE 27 DAY OF JUNE 2002
DULY CERTIFIED AND REGISTERED IN SAID OFFICE IN Trust BOOK NO. 590 PAGE 1
AND NOTED IN BOOK NO. Y PAGE 337 STATE TAX PAID \$
J. #441200 Bonnie Wear REGISTER
See # 112.

INST: 0007006201
RECEIVED: 06/27/2002 :
BONNIE WEAR
REGISTER OF DEEDS LOUDON CO. TN

Upon recording, please return to:

M. Maxine Hicks, Esq.
EPSTEIN BECKER & GREEN, P.C.
Resurgens Plaza
945 East Paces Ferry Road, Suite 2700
Atlanta, Georgia 30326
Phone: 404/923-9000
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"A"	Land Initially Submitted
"B"	Additional Property
"C"	By-Laws of Rarity Pointe Community Association, Inc.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

RARITY POINTE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Rarity Pointe ("Declaration") is made as of the date set forth on the signature page hereof by LTR Properties, Inc., a Tennessee corporation (the "Declarant").

Declarant is the owner of the real property described on Exhibit "A," which is attached and incorporated by reference or if Declarant is not the owner, such owner has consented to this Declaration. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Rarity Pointe Community Association, Inc. to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines (capitalized terms are defined in Article I below).

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

ARTICLE I: DEFINITIONS

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

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

1.2. "Adjacent Properties": Any residential, nonresidential or recreational areas, including without limitation, retail, office, commercial, or institutional areas and Private Amenities, which are located adjacent to, in the vicinity of, or within the Properties; which are owned and operated, in whole or in part, by Persons other than the Association; which are not subject to this Declaration; and which are neither Units or Common Area as defined in this Declaration.

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

1.4. "Association": Rarity Pointe Community Association, Inc., a Tennessee nonprofit mutual benefit corporation, its successors and assigns.

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

1.6. "Builder": Any Person who purchases one (1) or more Units for the purpose of constructing improvements thereon for later sale to consumers or who purchases one (1) or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing a Unit for residential purposes shall cease to be considered a Builder with respect to such Unit immediately upon occupancy of the Unit for residential purposes, notwithstanding that such Person originally purchased the Unit for the purpose of constructing improvements for later sale to consumers.

1.7. "By-Laws": The By-Laws of Rarity Pointe Community Association, Inc. attached as Exhibit "C," as they may be amended.

1.8. "Charter": The Charter of Rarity Pointe Community Association, Inc. as filed with the Secretary of State of Tennessee, as amended from time to time.

1.9. "Consolidated Lot": The tract resulting from the consolidation of multiple adjacent Lots as more particularly described in Section 10.16.

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

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

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

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

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

1.15. "Declarant": LTR Properties, Inc., a Tennessee corporation or any successor or assign who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant and the owner of all or any portion of the property described on Exhibits "A" or "B"; provided however, there shall be only one (1) Person entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

1.16. "Declarant-Related Entity": Any Person or entity which is a parent, subsidiary or affiliate of the Declarant, and/or in which the Declarant or any parent, subsidiary or affiliate of the Declarant or any officer, director, shareholder, partner, member, manager, or trustee of any of the

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foregoing, or any combination thereof, owns, directly or indirectly, not less than fifty percent (50%) of such entity, including but not limited to Rarity Communities, Inc.

1.17. "Design Guidelines": The design, architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9.

1.18. "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration, any Additional Property, or any Private Amenity, or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

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

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

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

1.22. "Governing Documents": The Declaration, By-Laws, Charter, all Supplemental Declarations, all Design Guidelines, the rules of the Association, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or any of the above, as each may be supplemented and amended from time to time.

1.23. "Lake Use Restrictions": Access restrictions, use restrictions and procedures governing access dock use, or use of Tellico Lake as may be promulgated by the Association from time-to-time, and during the Development Period, consented to by the Declarant. This term shall also include any rules, regulations and restrictions to the access dock use, and use of Tellico Lake promulgated by TVA.

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

1.25. "Master Plan": The land use plan or development plan for "Rarity Pointe," prepared by the land planning firm of Sterling Engineering, Inc., 1017 Hampshire Drive, Maryville, Tennessee 37801, as such plan may be amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of the Additional Property described on Exhibit "B" that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article 7.

1.26. "Member": A Person subject to membership in the Association pursuant to Section 3.2.

1.27. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.28. "Mortgagee": A beneficiary or holder of a Mortgage.

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1.29. "Neighborhood": A separately developed area within the Properties, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each single-family attached or detached housing development may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one (1) housing type with other features in common and may include noncontiguous parcels of Property.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee, if any, (established in accordance with the By-Laws) or Neighborhood Association if any, (as defined below) having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 3.3.

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

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

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

1.33. "Owner": One (1) or more Persons who hold the record title to any Unit, including the Declarant and any Builders, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

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

1.35. "Private Amenity": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties which are owned and operated, in whole or in part, by Persons other than the Association for recreational or other purposes. Any Private Amenity shall be designated by the Declarant in its sole discretion. The use of the term "Private Amenity" shall not be construed to imply or require a private club. Private Amenities may be operated on a club membership, daily fee, use fee, public, or private basis or otherwise and may include, without limitation, any golf course(s), marina or lodge and all related and supporting facilities and improvements.

1.36. "Private Sewer System": Any sanitary sewer system providing sewer service to all or any subset of Members located within or abutting the Properties, including any sanitary sewer gravity based and pressure based collector lines and pressure pumping mechanisms installed by Declarant and sanitary sewer service connections and pressure lines to or within a Unit and any related components or equipment required for the collection, transmission, treatment or processing of waste effluent, including any wastewater treatment facility, pumps, tanks, motors, casings, electrical lights and switches, whether installed by a Builder or Owner to the extent such lines and equipment are not conveyed to, or owned by a public or private utility company.

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

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

1.39. "Rarity Pointe": That certain planned community located in Loudon County, Tennessee, which is commonly referred to as Rarity Pointe.

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

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

1.42. "Supplemental Declaration": An instrument filed in the Public Records which subjects Additional Property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument filed by the Declarant pursuant to Section 3.5 which designates Voting Groups, any declaration of covenants, conditions and restrictions, and any declaration of condominium.

1.43. "Tellico Lake": That certain body of water known as "Tellico Lake" which is currently governed by the Tennessee Valley Authority (TVA), a corporate agency and instrumentality of the United States of America organized and existing pursuant to the Tennessee Valley Authority Act of 1933, located adjacent to the Properties and subject to the Lake Use Restrictions.

1.44. "TVA": The term used to define any Person exercising ownership, control and approval rights over activities on Tellico Lake as well as its use.

1.45. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area, common property owned by any Neighborhood Association, or property dedicated to the public. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of an unplatted parcel of land, the parcel shall be deemed to be a single Unit until such time as a subdivision plat or condominium plat is filed with respect to all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

1.46. "Voting Delegate": Any representative selected by the Class "A" Members within each Neighborhood to be responsible for casting all Class "A" votes attributable to Units in the Neighborhood on matters requiring a vote of the membership. The term "Voting Delegate" shall also refer to any alternate Voting Delegate acting in the absence of a Voting Delegate.

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

ARTICLE 2: PROPERTY RIGHTS

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

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

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit; provided however, the Owner shall remain responsible for payment of all assessments and other charges.

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2.2. Private Streets. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across any private streets and roads within the Properties ("Private Streets"), whether or not such Private Streets are Common Area, for the purpose of ingress and egress to public rights-of-way. The rights and nonexclusive easements granted herein are appurtenant to the title to each Unit, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) The right of the Declarant, so long as the Declarant owns the Private Streets, to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets, provided that the Declarant shall not by the adoption of any rule or regulation bar access of the Owners across the Private Streets;
- (c) The right of the Declarant to dedicate all or any part of Private Streets;
- (d) The right of the Declarant to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Owners contained in this Section; and
- (e) The rights of the Declarant and the Association to maintain the Private Streets.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable.

2.3. Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, roads, landscaped medians and cul-de-sacs, shared driveways, ponds, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners of Units to which the Exclusive Common Areas are assigned either as a Neighborhood Assessment or as a Specific Assessment, as applicable.

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

The Association may, upon approval of a Majority of the Class "A" votes within the Neighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Units in other

Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable use fees, which fees shall be used to offset the Neighborhood Expenses or Specific Assessments attributable to such Exclusive Common Area.

2.4. Lake. Access to and use of Tellico Lake shall be strictly subject to the Lake Use Restrictions and no Person shall gain any right to enter or to use Tellico Lake or to gain access to Tellico Lake from the Properties other than by virtue of membership in the Association or ownership or occupancy of a Unit. Although ownership or occupancy of a Unit shall not ensure that a right to access to Tellico Lake from the Properties exists, each Owner of a Unit acknowledges and agrees to strictly abide by the Lake Use Restrictions. Any Person, including, without limitation, any Owner, occupant of any Unit, or tenant, guest or invitee of any Owner gaining access to or using Tellico Lake from the Properties for any purpose shall assume the risk of such use. Under no circumstance shall the Declarant, the Association, any Builder, or any Person acting on their behalf assume any liability for use of Tellico Lake by an Owner, its invitees, or licensees.

2.5. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across Tellico Lake, the Common Area, any recreational facilities, or any vistas from Units will be preserved without impairment. The Association, and during the Development Period the Declarant shall have: (i) no obligation to take any actions including but not limited to pruning or thinning trees or other landscaping to provide visibility of Tellico Lake or of any other vista; and (ii) the right to add or remove trees and other landscaping adjacent to Tellico Lake or any other portion of the Properties in accordance with the Design Guidelines.

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

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

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

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

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

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

3.2. Voting. The Association shall have three (3) classes of membership, Class "A", Class "B", and Class "C" as set forth below.

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" and Class "C" Members. Each Class "A" Member shall have one (1) equal vote for each Unit in which he or she holds the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.10.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Charter, are specified in the relevant sections of this Declaration, the By-Laws and the Charter. The Class "B" Member may appoint a Majority of the members of the Board of Directors during the Development Period.

At such time, the Class "B" membership shall terminate, and the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Class "C". Class "C" Members shall be those owners or operators of any portion of the Adjacent Properties, including but not limited to any Private Amenities, that have entered into an agreement with the Association for the purposes of creating a relationship enabling the Association to provide services, including, without limitation, sewerage services or state licensure-related services, to such owner's or operator's portion of the Adjacent Properties. Such agreement shall set forth the number of votes that any such owner or operator is entitled to cast on any matters requiring a vote of the Class "C" Members; provided, however, that each Class "C" Member shall be entitled to at least one vote. Class "C" Members shall not have the right to vote on any matters except as specifically set forth in the Governing Documents.

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

(e) Exercise of Voting Rights by Class "A" Members. If there is more than one (1) Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it. If Voting Delegates have been elected pursuant to Section 3.4, the vote for each Unit owned by a Class "A" Member shall be exercised by the Voting Delegate representing the Neighborhood of which the Unit is a part, as provided

in such Section. No vote shall be exercised on behalf of any Unit if any assessment for such Unit is delinquent.

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

Upon termination of the Development Period, the Board of Directors, upon receipt of a petition signed by a Majority of the Owners of the Units to be affected, may, in its sole discretion and with the written consent of the Declarant, establish Neighborhoods, redesignate Neighborhood boundaries or remove property from a specific Neighborhood. Such petition shall be in writing and shall include a survey of the entire property affected by the petition which indicates the proposed boundaries of the new Neighborhoods or otherwise identifies the Units to be included within the proposed Neighborhoods. Such petition shall be deemed denied forty-five (45) Days following the filing of all required documents with the Board unless both the Board of Directors and the Declarant approve such application in writing within such forty-five (45) Day period. Either the Board or the Declarant may deny an application for any reason in its sole discretion. All applications and copies of any denials shall be filed with the books and records of the Association. The Owners requesting the division shall be responsible for any expenses incurred with respect to implementing a division of a Neighborhood, including but not limited to costs associated with preparation and presentation of the application, regardless of whether such application is approved or denied, and preparation a Supplemental Declaration or revised plat, if the application is approved.

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

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

3.4. Voting Delegates. The Board in its sole discretion shall determine whether Voting Delegates shall be elected for each Neighborhood; provided, however, all Neighborhoods which are similarly situated shall be treated the same. Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled

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personally to cast the votes attributable to their respective Units on any issue requiring a vote under this Declaration, the By-Laws or the Charter.

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

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

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

(c) The presence, in person or by proxy, of Class "A" Members representing at least ten percent (10%) of the total Class "A" votes attributable to Units in the Neighborhood shall constitute a quorum at any Neighborhood meeting. Each Class "A" Member who owns a Unit within the Neighborhood shall be entitled to cast one (1) equal vote per Unit owned.

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

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

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

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

3.5. Voting Groups. The Declarant may designate Voting Groups consisting of one (1) or more Neighborhoods for the purpose of electing directors to the Board. The designation of Voting Groups, if any, shall be to promote representation on the Board of Directors for various groups having dissimilar interests and to avoid a situation in which the Members from similar Neighborhoods are able, due to the number of Units in such Neighborhoods, to elect the entire Board of Directors, excluding representation of others. Following termination of the Class "B" membership, the number of Voting Groups within the Properties shall not exceed the total number of directors to be elected by the Class "A" Members pursuant to the By-Laws. The Members within each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of directors specified in the By-Laws.

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

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

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. Except as otherwise provided herein, the Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Tennessee.

4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section. Upon written request of Declarant, the

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Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

4.3. Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in Section 3.24 of the By-Laws. Such sanctions may include, without limitation:

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

(b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;

(c) suspending an Owner's right to vote;

(d) suspending any Person's right to use any recreational facilities within the Common Area and any part of the Exclusive Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit; and

(e) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

In the event that any occupant, guest or invitee of a Unit violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Unit that the violator is occupying or visiting.

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

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

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

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

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

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

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

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

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

4.7. Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Area to Loudon County, Tennessee, or to any other local, state, or federal governmental or quasi-governmental entity, or to any private utility company.

*Rarity Pointe Commercial Recreation and
Residential Development on Tellico Reservoir*

4.8. Security. Each Owner and occupant of a Unit, and their respective lessees, licensees, guests and invitees, shall be responsible for their own personal safety and the security on their Unit and on the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken, if any. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measure, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system or measure is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, the Declarant, and any successor Declarant are not insurers or guarantors of security within the Properties and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties. Any costs incurred by the Association to provide such services shall be paid by the Association and shall be charged either to all Units as a General Assessment or a Specific Assessment, or only to those certain Neighborhoods or Units benefited thereby, as a Special Assessment or a Neighborhood Assessment, as determined by the Board in its sole discretion.

4.9. Utility Lines. Each Owner, occupant, guest, and invitee acknowledges that neither the Association, the Board nor Declarant shall in any way be considered insurers or guarantors of health within the Properties and neither the Association, the Board, nor Declarant shall be held liable for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Properties. Each Owner, occupant, guest, lessee, licensee and invitee assumes all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that neither Declarant nor the Association have made any representations or warranties, nor has any Owner, occupant, guest, lessee, licensee, or invitee relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

4.10. Street Lighting Agreement. Declarant reserves the right to subject the Properties to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting, either or both which may require an initial payment and/or a continuing monthly payment to an electric company by each Owner or the Association.

4.11. Trails. The Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas within the Properties, including the Common Area, to be used as recreational bike and pedestrian pathways and trails ("trail system"). Each Owner acknowledges, understands and covenants to inform the occupants of such Owner's Unit, that the Properties may contain a trail system and that there may be certain inconveniences and loss of privacy associated with the ownership of Units adjacent to such trail system resulting from the use of the trail system by the Declarant, the Association, its Members, their tenants, occupants, guests and invitees.

4.12. Relationship With Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area, or convey portions of the Common Area, to non-profit, tax-exempt organizations for the benefit of the Properties. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section a "tax-exempt organization" shall mean an

entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

4.13. Powers of the Association Relating to Neighborhood Associations. The Association may veto any action taken or contemplated by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also may require specific action to be taken by any Neighborhood Association to fulfill its obligations and responsibilities under any Governing Document. For example, the Association may require that specific maintenance or repairs or aesthetic changes be performed by the Neighborhood Association. If the Neighborhood Association fails to comply with such requirements within a reasonable time as specified in writing by the Association, the Association may effect such action on behalf of the Neighborhood Association and assess the Units within such Neighborhood for any expenses incurred by the Association in taking such action. Such assessments may be collected as a Specific Assessment.

4.14. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or a Neighborhood Expense, depending on whether the service or facility is provided to all Units or only the Units within a specified Neighborhood. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

4.15. Rezoning. No Owner or any other Person may apply or join in an application to amend, vary or modify any applicable zoning law or code pertaining to the properties to any application for rezoning or for a zoning variance or waiver as to all or any portion of the Properties without the prior written consent of Declarant. Each Person that acquires any interest in the Properties acknowledges that Rarity Pointe is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or challenge: (a) changes in uses or density of property outside the Neighborhood in which such Person owns a Unit, or (b) changes in the Master Plan relating to property outside the Neighborhood in which such Person owns a Unit. Declarant may apply for such rezoning as to any portion of the Properties owned by it at any time.

4.16. Presence and Management of Wildlife. Each Owner and occupant, and each tenant, guest and invitee of any Owner or occupant acknowledges that the Properties are located adjacent to and in the vicinity of wetlands, bodies of water and other natural areas. Such areas may contain wildlife. Neither the Association, the Board, the original Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Properties. Each Owner and occupant of a Unit and each tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and further acknowledges that the Association, the Board, the original

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Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to engage in wildlife management plans and practices on the Properties to the extent that such practices are permitted by applicable state and federal law. The Declarant may assign these management rights to the Association.

ARTICLE 5: MAINTENANCE

5.1. Association's Responsibility.

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

- (i) all Common Area;
- (ii) all landscaping and other flora, parks, pond structures, and improvements, including any entry features, private streets, parking areas, sidewalks, bike and pedestrian pathways/trails, situated upon the Common Area;
- (iii) all furnishings, equipment and other personal property of the Association;
- (iv) any landscaping and other flora, parks, bike and pedestrian pathways/trails, sidewalks, buffers, entry signs and features, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;
- (v) such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or any contract or agreement for maintenance thereof entered into by the Association; and
- (vi) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant or Declarant-Related Entity to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

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

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

agree in writing to discontinue such operation. Prior to discontinuation of any sewerage treatment services, the Association shall also obtain the consent of Members holding 67% of Class "C" votes in the Association which are exercised by Class "C" Members which have entered into a Cost Sharing Agreement which entitles those Class "C" Members to sewerage system use privileges.

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

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

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

(e) The Association shall have the right but not the obligation to maintain the grass and other landscaping on each unimproved Unit, including any grass within that portion of the Unit located between the lot boundary adjacent to the street to the rear property line. For purposes of this Section, unimproved Unit shall mean a Unit without a dwelling.

(f) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit, and all structures, parking areas, sprinkler and irrigation systems, landscaping and other flora, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association. Each Owner shall also maintain the driveway and mailbox serving the Unit and all landscaping located in the right-of-way immediately adjacent to the Owner's Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.6(c). The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry under this Section shall not constitute a trespass.