

DECLARATION OF COVENANTS AND RESTRICTIONS

For

THE CATTAILS AT WINDSTONE

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made, entered into and declared effective as of the 9TH day of June, 1997, by **WINDSTONE PARTNERS, L.P.**, a Tennessee limited partnership ("Developer").

WITNESSETH:

WHEREAS, Developer is the owner of that certain tract or parcel of land located in or near the City of Chattanooga, Hamilton County, Tennessee, as more particularly described in Exhibit "A" and as shown on Exhibit "B", both of which Exhibits are attached hereto and made a part hereof (the "Property"); and

WHEREAS, Developer intends to improve and develop the Property as a residential townhome development and to construct thereon certain buildings, structures and other improvements in connection therewith, to be known as The Cattails at Windstone (the Property and the buildings, structures and other improvements to be constructed thereon, together with all rights, benefits and privileges belonging or in any way pertaining thereto, collectively the "Development"); and

WHEREAS, the Property and the Development will be a part of an existing planned development area known as Windstone, and will be subject to an existing Declaration of Covenants and Restrictions for the Windstone development, recorded in Book 3282, Page 10 in the Register's Office of Hamilton County, Tennessee, as the same has been and may be amended from time to time (collectively, the "Windstone Declaration"), which Windstone Declaration is incorporated herein by this reference to the extent the Windstone Declaration is intended to bind, benefit and otherwise apply to the Property; and

WHEREAS, Developer intends to subdivide the Property into approximately fifty-three (53) individual lots generally as shown on the preliminary concept plan attached as Exhibit "B" hereto (sometimes hereinafter referred to individually as a "Lot", or collectively as the "Lots", as the same may be established and/or modified hereafter by Developer from time to time by the filing and recording of subdivision plats thereof), to develop townhomes on the Lots and to sell the townhomes and the fee simple title to the Lots to various purchasers thereof, subject to the Windstone Declaration and to the covenants, conditions, restrictions, limitations, easements and other matters provided and imposed hereunder; and

WHEREAS, Developer desires to establish for the benefit of itself and all future owners of the Property and of Lots therein, certain rights, easements and privileges in, over and upon the Property, and to establish and impose certain mutually beneficial restrictions, obligations and liens with respect to the proper use, conduct and maintenance of the Development, and to promote and preserve the cooperative aspects of ownership of and residence in the Development, and to facilitate the proper administration of the Development in order to enhance the value, desirability and attractiveness thereof, and in furtherance thereof to establish an association of Developer and the owners of individual Lots for the governance of the Development, which association shall be known as The Cattails at Windstone Homeowners Association, Inc. (the "Cattails Association").

NOW, THEREFORE, in consideration of the foregoing premises, Developer does hereby publish and declare that the Property and the individual Lots therein shall be held, occupied, improved and otherwise used and enjoyed in accordance with and subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be covenants running with the land and both benefitting and burdening the Property, and which shall benefit and be binding upon Developer and all future owners of any Lot or other part of or interest in the Property, and their respective grantees, successors, assigns, heirs, executors, administrators, devisees and other personal representatives.

1. LAND USE AND BUILDING TYPE: The Property shall be used for residential purposes only, and no building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single-family dwelling.

2. ARCHITECTURAL CONTROL: No building or structural alterations, additions, or improvements shall be erected, placed or altered on any Lot until the construction plans and specifications, and a plan showing the location of the structural alterations, addition, or improvements thereto, have been approved in writing by the Windstone Residential Association Architectural Review Board (the "Windstone Review Board") (in accordance with the Windstone Declaration), as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. A copy of such approval shall be provided to the president of the Cattails Association within thirty (30) days after the approval thereof by the Windstone Review Board.

3. ALTERATIONS, ADDITIONS, OR IMPROVEMENTS: With the prior written approval of the Windstone Review Board (if applicable) and the Board of Directors Cattails Association, a Lot owner, at his or her sole expense, may make exterior and structural alterations, additions or improvements to the Lot and/or the improvements and landscaping located thereon. With respect to alterations, additions or improvements, the owner of the Lot shall be responsible for maintaining, repairing, replacing and insuring all such alterations, additions, and improvements and for any real

property taxes attributable thereto. Any Lot owner may make interior and nonstructural alterations, additions or improvements within a townhome structure on his or her Lot without the prior written approval of the Cattails Association. Any owner making alterations, additions and/or improvements to his or her Lot shall be responsible for and shall promptly repair and restore any damage to the Property, the Development or any part thereof or improvements thereon, resulting from such owner's activities.

4 MAINTENANCE AND REPAIR: Except to the extent the Cattails Association assumes the responsibility for maintenance and repair as hereinafter provided, each Lot owner, at his or her own expense, shall maintain his or her Lot and the townhome and other improvements located thereon in good condition and in good order and state of repair and cleanliness, including regular and periodic cutting and maintenance of grass and landscaping and painting and maintenance of the exteriors of all improvements.

5. EASEMENTS: Easements upon, over, under and across individual Lots for the installation, maintenance, repair, removal and replacement of electric power lines, natural gas lines, domestic water lines, telephone, cable television and other communication lines, sanitary and storm sewer lines, storm and surface water drainage, and ingress and egress, together with all necessary and appropriate facilities and equipment related thereto, are shown on the concept plan attached hereto as Exhibit "B", and are hereby reserved for the purposes stated herein and as shown on Exhibit "B" hereto, and may be further granted, declared, altered, relocated and/or reserved as shown on individual subdivision plats of the Property (or portions thereof) which may be recorded by Developer from time to time hereafter. In addition, such future subdivision plats and/or future deeds from Developer to individual Lot owners may contain grants and/or reservations of additional or different easements for these purposes and such grants and/or reservations shall be binding and authoritative as so provided in such plats and/or deeds. The easement areas on each Lot shall be maintained continuously by the owner of such Lot, except to the extent that the maintenance of the easement areas and the improvements constructed or installed therein have been expressly assumed by the Cattails Association or by the appropriate governmental authority or utility company. It is intended that easements for reasonable pedestrian access be granted across each Lot to the owners of Lots adjoining or proximate thereto, and his or her guests and invitees, including any necessary maintenance personnel, to allow movement between the front yard and back yard of any townhome located on such adjoining Lot and to permit pedestrian access to and from each townhome to any common areas and common facilities in the Development and in the Windstone development (as the same may be provided under the Windstone Declaration, as amended, or otherwise).

6. NUISANCES: No noxious or offensive activity shall be carried on upon any Lot or elsewhere in the Development, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other owners of Lots in the

Development.

7. TEMPORARY STRUCTURE: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.

8 EXTERIOR APPEARANCE: No Lot and no townhome located thereon shall display or have annexed to it any canopy or awning, nor will any outside radio or television antenna be allowed or permitted to be placed thereon, except for small television and dish antennas as may be allowed by the Windstone Declaration and as may be permitted with the approval of the Board of Directors of the Cattails Association as to location. No fences shall be allowed to be constructed on any Lot.

9. ANIMALS: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot; except that domestic dogs, cats and other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. When pets are "walked" they must be kept on a leash at all times, and must be kept off of other owners' Lots. Any animal waste shall be promptly removed from the streets and other portions of the Development by the pet's owner.

10. GARBAGE AND REFUSE DISPOSAL: No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, stored or placed on any Lot, except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All garbage and trash containers are to be covered, or shall be of plastic or similar material, securely closed. Such containers shall not be placed out at curb-side by the owner of any Lot sooner than the night prior to the scheduled garbage service pick-up, and shall be removed and stored by the owner thereof on the same day as the garbage service pick-up.

11. WATER SUPPLY: No individual water supply system shall be permitted on any Lot for any purpose.

12. ENCROACHMENTS OR OVERHANGS: Developer acknowledges that, in connection with its construction and development of townhomes on each Lot, certain foundation components, eaves and roof overhangs attached to the structural walls of the townhomes will or may encroach over and onto adjoining or contiguous Lots. There is hereby reserved and created on each of said Lots which may be so affected, an easement for said encroachments or overhangs, as well as for the right to maintain jointly any common and adjoining wall of any townhome that is jointly used for structural support or for decorative or privacy use. In addition to the easement for each of said encroachments and overhangs, there is also granted and reserved the right to maintain and repair the same for so long as said encroachments and overhangs shall continue to exist. In the further event that any structure comprising said townhome is

totally destroyed and then rebuilt, the owner of said townhome so affected agrees that said encroachments and overhangs, and the easements therefor, shall be permitted to continue upon the reconstruction thereof, and the right of maintenance shall continue to exist.

13. COMMON SCHEME OF EXTERIOR DECORATION: It is stipulated that as to each townhome built in the Development, the paint, the woodwork and other exterior materials of each townhome shall be of the same color as all other townhomes and shall not be changed unless the change is agreed to and approved by the Board of Directors of the Cattails Association, and any such change in color shall be made as to all of the townhomes in the Development.

14. REQUIREMENT TO REPAIR AND REBUILD: In the event of the damage to or destruction of any townhome by fire, windstorm, or other cause, it shall be the duty and obligation of the owner of such townhome to restore the same to its condition, as it existed prior to such damage or destruction, without undue delay, including the use of the same exterior materials as were originally incorporated therein. This provision is for the benefit of the owners of all townhomes in each cluster of townhome buildings as shown on Exhibit "B" hereto (as such concept plan may be modified from time to time by Developer), to preserve the appearance and structural integrity thereof.

15. INSURANCE: The owner of each Lot shall at all times maintain and keep in full force and effect a proper policy of homeowner's casualty and liability insurance, insuring against fire and other casualty, with extended coverage endorsements, issued by an underwriter acceptable to the Cattails Association, in an amount sufficient to cover the full replacement value of all improvements located thereon and sufficient to repair and rebuild the townhome structure and other improvements. Copies of such policies (or certificates thereof) shall be submitted to and kept on file with the Cattails Association. There shall be included in all such policies a mutual waiver of any right of subrogation as to adjoining or connecting townhomes, it being the intent that no Lot owner shall be liable to another Lot owner, or to his or her insurance carrier, for any loss or damage that each Lot owner has agreed (by being subject to these restrictive covenants) to cover by such insurance.

16. MEMBERSHIP AND VOTING RIGHTS IN CATTAILS ASSOCIATION: Every owner of a Lot, by his or her acceptance of title to such Lot, shall automatically be a member of the Cattails Association. Membership shall be appurtenant to and may not be separated from ownership of such Lot. The members shall be entitled to cast one vote for each Lot that they own. In case of joint ownership, the vote for such Lot shall be exercised as they mutually determine. The members of the Cattails Association shall be subject to the rights, benefits, duties, conditions, restrictions and requirements set forth in the By-Laws of the Cattails Association, attached hereto as Exhibit "C" and made a part hereof, as such By-Laws may be amended from time to time by the members of the Cattails Association.