

Secretary of State
Division of Business Services
312 Eighth Avenue North
6th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243

DATE: 10/02/06
 REQUEST NUMBER: 5869-1218
 TELEPHONE CONTACT: (615) 741-2286
 FILE DATE/TIME: 10/02/06 1251
 EFFECTIVE DATE/TIME: 10/02/06 1251
 CONTROL NUMBER: 0530967

TO:
 MILLER & MARTIN PLLC
 832 GEORGIA AVENUE
 CHATTANOOGA, TN 37402

RE:
 VICTORIAN GARDENS CONDOMINIUM ASSOCIATION, INC.
 CHARTER - NONPROFIT

CONGRATULATIONS UPON THE INCORPORATION OF THE ABOVE ENTITY IN THE STATE OF TENNESSEE, WHICH IS EFFECTIVE AS INDICATED.

A CORPORATION ANNUAL REPORT MUST BE FILED WITH THE SECRETARY OF STATE ON OR BEFORE THE FIRST DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE CORPORATION'S FISCAL YEAR. ONCE THE FISCAL YEAR HAS BEEN ESTABLISHED, PLEASE PROVIDE THIS OFFICE WITH THE WRITTEN NOTIFICATION. THIS OFFICE WILL MAIL THE REPORT DURING THE LAST MONTH OF SAID FISCAL YEAR TO THE CORPORATION AT THE ADDRESS OF ITS PRINCIPAL OFFICE OR TO A MAILING ADDRESS PROVIDED TO THIS OFFICE IN WRITING. FAILURE TO FILE THIS REPORT OR TO MAINTAIN A REGISTERED AGENT AND OFFICE WILL SUBJECT THE CORPORATION TO ADMINISTRATIVE DISSOLUTION.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR FILING, PLEASE REFER TO THE CORPORATION CONTROL NUMBER GIVEN ABOVE. PLEASE BE ADVISED THAT THIS DOCUMENT MUST ALSO BE FILED IN THE OFFICE OF THE REGISTER OF DEEDS IN THE COUNTY WHEREIN A CORPORATION HAS ITS PRINCIPAL OFFICE IF SUCH PRINCIPAL OFFICE IS IN TENNESSEE.

FOR: CHARTER - NONPROFIT

ON DATE: 10/02/06

FROM:
 MILLER & MARTIN PLLC (832 GEORGIA AVE)
 1000 VOLUNTEER BLDG.
 832 GEORGIA AVENUE
 CHATTANOOGA, TN 37402-0000

	FEE\$	TAX\$
RECEIVED:	\$100.00	\$0.00
TOTAL PAYMENT RECEIVED:	\$100.00	

RECEIPT NUMBER: 00004034499
 ACCOUNT NUMBER: 00000307



Riley C. Darnell

RILEY C. DARNELL
 SECRETARY OF STATE

CHARTER OF
VICTORIAN GARDENS CONDOMINIUM ASSOCIATION, INC.

RECEIVED
STATE OF TENNESSEE

2006 OCT -2 PM 12:51

RILEY DARRRELL
SECRETARY OF STATE

FILED

Under Section 48-52-102 of the
Tennessee Nonprofit Corporation Act

The undersigned natural person, having the capacity to contract and acting as the Incorporator of a corporation under the Tennessee Nonprofit Corporation Act, adopts the following Charter for such corporation:

5869.1218

1. Name. The name of the corporation is Victorian Gardens Condominium Association, Inc.
2. Mutual Benefit. The corporation is a mutual benefit corporation.
3. Registered Office. The location of the initial registered office of the corporation is 6315 E. Brainerd Road, Suite E, Chattanooga, Hamilton County, Tennessee 37421. The name of the initial registered agent at that office is J. Robert McKenzie.
4. Incorporator. The incorporator is James M. Haley IV, whose address is 832 Georgia Avenue, Suite 1000, Volunteer Building, Chattanooga, Tennessee 37402-2289.
5. Term. The duration of the corporation is perpetual.
6. Principal Office. The address of the initial principal office of the corporation in the State of Tennessee shall be 6315 E. Brainerd Road, Suite E, Chattanooga, Hamilton County, Tennessee 37421.
7. Non-Profit. The corporation is not for profit.
8. Purposes. The corporation is organized for the purpose of carrying on one or more of the exempt functions of a homeowners association for which a not for profit corporation may be organized under the Tennessee Nonprofit Corporation Act, including without in any way limiting or restricting the generality of the foregoing, the administering, through a Board of Directors, the condominium project known as the Victorian Gardens which includes the management, maintenance, and care of the corporation's property as well as the preservation and architectural control of the improvements and common areas of said condominium project.

Further purposes of the corporation include the promotion of the health, safety and welfare of the owners and occupants of the Victorian Gardens and any additions thereto, including the power to:

- (a) Exercise all of the powers and privileges, and perform all of the duties and obligations of the Association, as set forth in the Master Deed establishing a Horizontal Property Regime under the Tennessee Horizontal Property Regime Act for Victorian

Gardens Horizontal Property Regime, to be recorded in the Register's Office of Hamilton County, Tennessee, as the same may be amended from time to time.

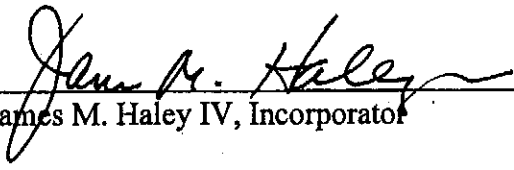
(b) Fix, levy, collect and enforce payment of all charges and assessments pursuant to the terms of the Master Deed, pay all expenses called for thereunder, including such licenses, tax or other governmental charges levied or imposed against the property of the Association.

(c) Have and exercise any and all powers, rights and privileges which a corporation organized under the provisions of the Tennessee Nonprofit Corporation Act relating to not for profit corporations may now or hereafter have or exercise.

5859.1219

9. Members. This corporation is to have members. Every person or entity who is a record owner of a condominium unit in the Victorian Gardens shall be a member for so long as such person shall continue to be a record owner. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to, and may not be separated from, ownership of any unit which is subject to assessment under the terms of the Master Deed aforesaid.
10. Liquidation; Dissolution. In the event of liquidation, dissolution or winding up of the corporation, whether voluntary, involuntary or by operation of law, the residual assets of the corporation shall be distributed to the members pro rata in accordance with their respective membership interests in the corporation.
11. Amendment. Amendment of this Charter shall require the affirmative vote of Co-Owners representing at least two-thirds (2/3) of the total ownership interests in the Common Elements as defined in the aforesaid Master Deed.
12. Director's Liability. A director of the corporation shall not be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the corporation or its members; (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (c) under Section 48-58-304 of the Tennessee Nonprofit Corporation Act. If the Tennessee Nonprofit Corporation Act is hereafter amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Tennessee Nonprofit Corporation Act.
13. Indemnification. The corporation shall have the power to indemnify its directors, officers, employees and agents to the fullest extent permitted by the Tennessee Nonprofit Corporation Act.

IN WITNESS WHEREOF, the undersigned incorporator has signed this charter the 28th day of September, 2006.



James M. Haley IV, Incorporator

5859.1220

EXHIBIT "D"

Bylaws

**BYLAWS
OF
VICTORIAN GARDENS CONDOMINIUM ASSOCIATION, INC.¹
as adopted October ____, 2006**

**ARTICLE I
MEMBERS (UNIT OWNERS)**

SECTION 1. ELIGIBILITY. Victorian Gardens Condominium Association, Inc. (the "Association"), a Tennessee nonprofit corporation, shall have one class of membership, consisting of the respective Unit Owners of the Property known as Victorian Gardens, located in Chattanooga, Tennessee. Each such Unit Owner's respective membership interest in the Association shall be in accordance with its respective percentage of ownership interest in the Common Elements of the Property.

SECTION 2. SUCCESSION. The membership in the Association of each Unit Owner shall automatically terminate when it ceases to be a Unit Owner, and upon conveyance, transfer or other disposition of a Unit Owner's ownership interest in the Property, said Unit Owner's membership in the Association shall automatically be transferred to the new Unit Owner succeeding to such ownership interest. Upon the conveyance, transfer, or other disposition of a portion of a Unit Owner's ownership interest, the transferring Unit Owner and the transferee thereof shall each be members of the Association in accordance with the percentage of ownership interest in the Common Elements of each following such conveyance or transfer.

SECTION 3. ANNUAL MEETINGS. The Unit Owners shall hold a regular annual meeting. The first regular annual meeting of Unit Owners (the "First Meeting") shall be held on the first Tuesday in April, or such other date which is within forty-five (45) days thereof, as the Board shall prescribe. Subsequent to the First Meeting, an annual meeting of Unit Owners shall be held on such date, not less than sixty (60) nor more than one hundred and twenty (120) days after the end of the Association's last preceding fiscal year, as the Board shall prescribe; provided, that if in any such year, the annual meeting shall not have been held within such period, then it shall be held on the first Tuesday of the fifth month after the end of the Association's last preceding fiscal year, or if such day be a legal holiday, on the next business day following. At each annual meeting, the Unit Owners in accordance with and subject to the other provisions of these By-laws shall (a) elect a Board of Directors, (b) receive the president's report on the activities and the financial condition of the Association, (c) transact such other business as may properly come before the meeting, and (d) to the extent that the aggregate Non-capital Assessments collected from the members during the

¹ The terms used in these By-laws, to the extent they are not herein defined but are defined in the Master Deed for Victorian Gardens Horizontal Property Regime, shall have the same definition as set forth therein, as the same may be amended from time to time, which Master Deed is recorded in the office of the Register of Deeds of Hamilton County, Tennessee. The words "member" or "members" as used in these By-laws means and shall refer to "Unit Owner" or "Unit Owners," as the case may be, as defined in the Master Deed.

year (and any applied from previous years) exceed the expenditures for that year, the members shall vote either to return this excess pro rata to the members or apply the excess pro rata to the next year's Non-capital Assessments. The members also may vote to levy and collect Capital Assessments for capital improvements. Such Capital Assessments shall exist apart from any Non-capital Assessments. The members shall dictate the timing, amount and purpose of all Capital Assessments. In the alternative, the Unit Owners may vote to defer the votes regarding Non-capital Assessments and Capital Assessments to a later Special Meeting to be called in accordance with Article I, Section 4. All such meetings of Unit Owners shall be held at such place in Hamilton County, Tennessee, and at such time as specified in the written notice of such meeting, which shall be delivered to all Unit Owners at least ten (10) days and not more than sixty (60) days prior to the date of such meeting. Such notice shall also state the purpose of such meeting.

SECTION 4. SPECIAL MEETINGS. Special meetings of the Unit Owners may be called by the President or shall be called by the President or Secretary at the request in writing of a majority of the Directors of the Board, or at the request in writing of ten percent (10%) of Unit Owners. Special meetings shall be called by delivering written notice to all Unit Owners not less than ten (10) days nor more than sixty (60) days prior to the date of said meeting, stating the date, time, place and purpose of said special meeting. Only business within the purposes described in the meeting notice shall be submitted to the Unit Owners by the Board at a special meeting called pursuant to the provisions of this Section.

SECTION 5. DELIVERY OF NOTICE OF MEETINGS. Notices of meetings shall be delivered by or at the direction of the Secretary of the Association, and may be delivered either personally or by mail to a Unit Owner at the address given to the Board by said Unit Owner for such purpose, or to the Unit Owner's Unit, if no address for such purpose has been given to the Board.

SECTION 6. VOTING. The aggregate number of votes for all Unit Owners shall be one hundred (100) and shall be divided among the respective Unit Owners in accordance with their respective percentages of ownership interest in the Common Elements. For the purposes of voting under these By-laws, it is assumed that each Unit has only one Unit Owner. If any Unit Owner consists of more than one Person, the voting rights of such Unit Owner shall not be divided, but shall be exercised as if the Unit Owner consisted of only one Person in accordance with the proxy or other designation made by the Persons constituting such Unit Owner. The Developer may exercise the voting rights with respect to Units owned by it. If a Unit Owner is a trust, then the voting rights of said Unit Owner may be exercised by a beneficiary of such trust, and if a Unit Owner or such a beneficiary is a partnership, then the voting rights of said Unit Owner or beneficiary may be exercised by a general partner of such Unit Owner or beneficiary, and if a Unit Owner or such beneficiary or such partner is a corporation, then the voting rights of said Unit Owner, beneficiary or partner may be exercised by an officer or duly authorized agent of that corporation. Except for the election of Directors and except as set forth below, all matters shall be determined by an affirmative majority vote by Unit Owners voting at such meeting at which a quorum is in attendance. The following matters shall require the approval of Unit Owners owning not less than seventy-five percent (75%) of the total undivided ownership of the Common Elements, by affirmative vote at a meeting duly called for that purpose or by written proxy or ballot: (a) the merger or consolidation of the Association; (b) the sale, lease, exchange, Mortgage, pledge, or other disposition of all or

substantially all of the Property and assets of the Association; and (c) the purchase or sale of land or Units on behalf of all Unit Owners. At any meeting of Unit Owners, each Unit Owner shall be entitled to vote in person or by proxy.

SECTION 7. QUORUM. A quorum of Unit Owners for any meeting shall be constituted by Unit Owners represented at the beginning of the meeting in person or by proxy and holding a majority of the total undivided ownership of the Common Elements.

SECTION 8. RULES OF THE MEETING. The Board may prescribe reasonable rules for the conduct of all meetings of the Board and Unit Owners.

ARTICLE II BOARD OF DIRECTORS

SECTION 1. NUMBER, ELECTION AND TERM OF OFFICE. The Board of Directors of the Association shall constitute the "board of administrators" provided for in the Horizontal Property Act of the State of Tennessee, as amended (the "Act"), and all rights, titles, powers, privileges and obligations vested in or imposed upon the "board of administrators" in said Act or in the Master Deed may be held or performed by the Association or by the duly elected members of the Board and their successors in office. Except as hereafter provided, the Board shall consist of three (3) Directors. The First Board shall be appointed by the Developer. One member of the First Board shall hold office for two (2) years, one member of the First Board shall hold office for three(3) years and one member of the First Board shall hold office for four (4) years, and the Developer shall designate which member serves for each term of years. Thereafter, the Directors shall be designated by Unit Owners holding a majority of the total undivided ownership of the Common Elements, either in person or by proxy at the regular annual meeting of Association members. Each Director, except for the members of the First Board shall hold office for the term of two (2) years. Directors may succeed themselves in office.

SECTION 2. QUALIFICATION. Except for members of the First Board, each Director shall be an officer, director, trustee, or employee of a Unit Owner. If a Director shall cease to meet such qualifications during his term, he shall thereupon cease to be a Director and his place on the Board shall be deemed vacant.

SECTION 3. RESIGNATION AND REMOVAL. Any Director may resign at any time by written notice to the Association effective as of the date such notice is received by the Association. Any Director may be removed from office with or without cause by the vote of Unit Owners owning not less than two thirds (2/3) of the total undivided ownership of the Common Elements who are present or represented by proxy at any annual meeting or special meeting of the Association duly called for such purpose, provided that a member of the First Board may be removed from office only for cause and by the vote of eighty percent (80%) of the total undivided ownership of the Common Elements.

SECTION 4. VACANCIES. Any vacancy occurring in the Board for any reason shall be filled by a Unit Owner who shall be elected by majority vote of the remaining members of the

Board, except that a vacant position on the Board which was last filled by a member of the First Board shall be filled by a person appointed by the Developer who need not be a Unit Owner. Any Director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the Director which he succeeds.

SECTION 5. COMPENSATION. Directors shall receive no compensation for their services as Directors, unless expressly provided for by a resolution duly adopted by Unit Owners owning a majority of the total Units. The Board may, however, reimburse any Director for his reasonable expenses in attending any meeting of the Board.

SECTION 6. MEETINGS. At least four (4) regular meetings of the Board shall be held annually, one of which (the "Regular Annual Meeting of the Board") shall be held within ten (10) days after the regular annual meeting of Unit Owners. Special meetings of the Board shall be held upon a call by the President or at the written request of a majority of the Board by the President or Secretary on not less than forty-eight (48) hours notice in writing to each Director, delivered personally or by mail or facsimile transmission. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Board without a meeting. Each Unit Owner shall receive at least ten (10) days prior notice (in the same manner as that provided herein for the giving of notice of the annual Unit Owners' meeting) of any meeting of the Board concerning the adoption of the proposed annual budget or any increase thereof, or concerning the establishment of an assessment. Meetings of the Board shall be open to Unit Owners.

SECTION 7. QUORUM. All of the Directors shall be required to constitute a quorum. An affirmative vote of a majority of those Directors present at a meeting at which a quorum is in attendance shall be necessary to transact business.

SECTION 8. PARTICIPATION IN MEETINGS BY TELEPHONE. Any one or more members of the Board may participate in a meeting of the Board by means of conference telephone or similar communication equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

SECTION 9. CONSENTS. Whenever by any provision of law or of the Charter or these By-laws or the Master Deed the vote of the Board at any meeting thereof is required or permitted to be taken in connection with any corporate action, the meeting and the vote of the Board may be dispensed with, if all of the members of the Board who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such corporate action being taken.

SECTION 10. POWERS AND DUTIES. The Board shall exercise for the Association all powers, duties and authority vested therein by the Act, the Master Deed, the Charter or these By-laws, except for such powers, duties, and authority reserved thereby to the members of the Association. The powers and duties of the Board shall include, but shall not be limited to, the following:

- (a) To elect and remove the officers of the Association as hereinafter provided and to establish compensation for such officers, provided that officers shall receive no compensation for their services unless expressly provided for by a resolution duly adopted by Unit Owners holding a majority of the total undivided ownership of the Common Elements;
- (b) To administer the affairs of the Association and the Property;
- (c) If desired by the Board, to engage the services of a Managing Agent or other personnel to maintain, repair, replace, administer and operate the Property or any part thereof for all of the Unit Owners, upon such terms, subject to the provisions of subparagraph 9(c) of the Master Deed, and for such compensation and with such authority as the Board may approve (the "Initial Management Agreement");
- (d) To administer, manage, and operate the Property, including the Common Elements, and to formulate policies therefor;
- (e) To adopt rules and regulations, with written notice thereof to all Unit Owners, governing the details of the administration, management, operation and use of the Property and the Common Elements, and to amend such rules and regulations from time to time;
- (f) To provide for the operation, care, upkeep, maintenance, repair, replacement and improvement of the Common Elements and payments therefor, including, without limitation, the right to restore the Property in the case of a casualty loss as provided in Paragraph 16 of the Master Deed, and to approve payment vouchers or to delegate such approval to the officers of the Association, or the Managing Agent, if any;
- (g) To have access to each Unit from time to time as may be necessary for the maintenance, repair, or replacement of any Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to one or more other Units;
- (h) To obtain adequate and appropriate kinds of insurance as provided in the Master Deed;
- (i) To provide for the designation, employment and dismissal of employees and other personnel necessary or advisable for the maintenance and operation of the Common Elements, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Property and the Common Elements, and to delegate any such powers to the Managing Agent, if any (and any employees or agents of the Managing Agent);
- (j) To appoint committees of the Board and to delegate to such committees authority to carry out certain duties of the Board;

(k) To determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deems advisable;

(l) To estimate the amount of, prepare, adopt and distribute the annual budget, and to provide the manner of maintenance, repair, replacement, administration, management and assessing, levying or collecting from the Unit Owners their respective shares of the Common Expenses, as hereinafter provided;

(m) To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property;

(n) Provided that it receives the prior written approval of Unit Owners owning a majority of the total undivided ownership of the Common Elements, excluding the Developer as a Unit Owner, to enter into agreements or arrangements to lease one or more Units or other quarters for Building personnel upon such terms as the Board may approve, and to purchase, for and on behalf of the Association, one or more Units or other quarters for Building personnel, pursuant to the Master Deed, and to make Mortgage arrangements with respect to such Units to be purchased;

(o) Other than as set forth in Section 10(n) above, to bid on and purchase, for and on behalf of the Association, any Unit, or interest therein, at a sale pursuant to a Mortgage foreclosure, a foreclosure of the lien for Common Expenses or an order or direction of a court, or at any other involuntary sale, upon the consent or approval of Unit Owners owning not less than seventy-five percent (75%) of the total undivided ownership of the Common Elements, provided that such consent shall set forth a maximum price that the Board or its duly authorized agent may bid and pay for such Unit or interest therein;

(p) Other than as set forth in Section 10(n) above, to purchase or lease any Unit, or interest therein, upon the consent or approval of Unit Owners owning not less than seventy-five percent (75%) of the total undivided ownership of the Common Elements, provided that such consent shall set forth a maximum price that the Board or its duly authorized agent may bid and pay for such Unit or interest therein;

(q) Other than as set forth in Section 10(n) above, to make such Mortgage arrangements levy special assessments proportionately among the respective Unit Owners, and make other financing arrangements, with the approval of Unit Owners owning not less than seventy-five percent (75%) of the total undivided ownership of the Common Elements, in order to close and consummate the purchase or lease of a Unit or interest therein, by the Association, provided however, that no such financing arrangement shall be secured by an encumbrance on any interest in the Property other than the Unit, or interest therein, to be purchased or leased, and the percentage interest in the Common Elements appurtenant thereto;

(r) Other than as set forth in Section 10(n) above, to own, encumber, convey and otherwise deal with Units conveyed to or purchased by the Association or the Board, for and

on behalf of the Association, with the approval of Unit Owners owning not less than seventy-five percent (75%) of the total undivided ownership of the Common Elements;

(s) Unless otherwise provided herein or in the Master Deed, to comply with the instructions of a Majority of the Unit Owners as defined in the Master Deed as expressed in a resolution duly adopted at an annual or special meeting of the Unit Owners;

(t) To act in a representative capacity in relation to matters involving the Common Elements or more than one Unit, on behalf of the Unit Owners, as their interest may appear; and

(u) To exercise all other powers and duties of the Board of Directors or Unit Owners as a group referred to in the Act, and all powers and duties of a Board of Directors referred to in the Master Deed or these By-laws.

In the event the Directors are unable to reach a decision on an issue with respect to any of the powers and duties granted under these By-laws or under applicable law, the Board shall refer such unresolved issue to the Unit Owners for their vote, and if the vote of a Majority of Unit Owners cannot be obtained, then, the Unit Owners will resolve the issue in accordance with the provisions of Section 32 of the Master Deed.

SECTION 11. NON-DELEGATION. Nothing in this Article or elsewhere in these By-laws shall be considered to grant to the Board, the Association or to the officers of the Association any powers or duties which, by law or by the Master Deed, have been retained and/or delegated to the Unit Owners.

ARTICLE III COMMITTEES OF THE BOARD

SECTION 1. DESIGNATION. The Board, by resolution adopted by a majority of the entire Board, may designate one or more committees, having such title as the Board may consider to be properly descriptive of its function, each of which, to the extent provided in such resolution, shall have all the authority of the Board in the management of the business and affairs of the Association. However, no such committee shall have authority as to any of the following matters, except as specifically so authorized by the Board,

(a) the amendment or repeal of the Charter or these By-laws or the adoption of new By-laws;

(b) the submission to Unit Owners of any action that needs authorization by the Unit Owners under the Tennessee Not-For-Profit Corporation Act.

(c) the approval or recommendation to Unit Owners of dissolution, merger, or the sale, pledge or transfer of all or substantially all of the Association's assets;

(d) the election, appointment or removal of Directors or the filling of vacancies on the Board or any of its committees; or

(e) the making of any corporate distributions.

Each committee shall consist of one or more Directors and such Unit Owners as the Board, at its option, may designate. A majority of any such committee shall constitute a quorum and may determine its action, and fix the time and place of its meetings unless the Board shall otherwise provide. The Board may designate one or more Directors as alternate members of any such committee who may replace any absent member or members of any meeting of such committee.

SECTION 2. TENURE; REPORTS. Each such committee shall serve at the pleasure of the Board. It shall keep minutes of its meetings and report the same to the Board, and it shall observe such other procedures with respect to its meetings as are prescribed in these By-laws or, to the extent not prescribed herein, as may be prescribed by the Board in the resolution appointing such committee.

ARTICLE IV OFFICERS

SECTION 1. EXECUTIVE OFFICERS. The executive officers of the Association shall be:

(a) A President, who shall be a Director and who shall preside over the meetings of the Board and of the Unit Owners, and who shall be the chief executive officer of the Association;

(b) One or more Vice Presidents, who shall perform the duties of the President in the event he is unable to act, and shall perform such other duties as may be prescribed from time to time by the President or the Board;

(c) A Secretary, who shall keep the minutes of all meetings of the Board and of the Unit Owners, and shall be designated as the officer (i) to authenticate records of the Association, (ii) to mail and receive all notices served by or upon the Board or the Association and (iii) to execute amendments to the Master Deed (including the Plat) and these By-laws, as provided in the Act, the Master Deed and these By-laws, and shall, in general, perform all of the duties incident to the office of Secretary, and may be a representative of the Managing Agent;

(d) A Treasurer, who shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported; and

(e) Such additional officers as the Board shall from time to time designate. Any officer may hold two or more offices but no officer may be both President and Secretary at the same time.

SECTION 2. POWERS. The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit.

SECTION 3. TERM OF OFFICE. Each officer shall hold office for the term of one year and until his successor shall have been appointed or elected and qualified, provided that any officer may succeed himself.

SECTION 4. VACANCIES. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at either a regular or special meeting of said Board. Any officer so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds.

SECTION 5. REMOVAL; RESIGNATION. Any officer may be removed with or without cause at any time by vote of one hundred percent (100%) of the total membership of the Board at a regular meeting or special meeting thereof and may resign by written notice to the Association.

SECTION 6. COMPENSATION. The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by a majority of the Unit Owners.

ARTICLE V NOTICES

SECTION 1. FORM; DELIVERY. Notices to Directors and Unit Owners shall be in writing and may be delivered personally or by mail. Notice by mail shall be deemed to be given at the time when deposited in the post office or a letter box, in a post-paid sealed wrapper, and addressed to Directors or Unit Owners at their respective addresses appearing on the books of the Association, unless any such Director or Unit Owner shall have filed with the Secretary of the Association a written request that notices intended for him be mailed or delivered to some other address designated in such request. Meeting notices to Directors and Unit Owners shall state the place, day and hour of the meeting and a description of the matters (a) with respect to an annual meeting, which must be approved by the members under the Tennessee Nonprofit Corporation Act, (b) with respect to a special meeting, for which the meeting is called, or (c) requested in writing to be raised at the meeting by a person entitled to call a special meeting at least ten (10) days before the notice is sent.

SECTION 2. WAIVER OF NOTICE. Whenever a notice is required to be given by statute, the Charter or these By-laws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to such notice. In addition, any Unit Owner attending a meeting of Unit Owners in person or by proxy without protesting at the beginning of the meeting (or promptly upon his arrival) the lack of notice thereof to him, and any Director attending a meeting of the Board without protesting at the beginning of the meeting (or promptly upon his arrival) such lack of notice and who does not

thereafter vote for or assent to action taken at the meeting shall be conclusively deemed to have waived notice of such meeting.

ARTICLE VI ASSESSMENT

SECTION 1. ANNUAL BUDGET. The Board shall cause to be prepared and shall adopt and distribute to all Unit Owners at the annual meeting a detailed estimated proposed annual budget for each fiscal year of the Association. Such budget shall set forth with particularity all anticipated Common Expenses by category as well as all anticipated assessments, other income, and cash requirements for the year, including, but not limited to, salaries, wages, payroll taxes, legal and accounting fees, working capital fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, contributions to reserves, capital expenditures and all other Common Expenses. Such budget shall also set forth each Unit Owner's proposed annual Capital and Non-capital Assessments. To the extent that the aggregate Capital and Non-capital Assessments and other cash income collected from the Unit Owners during the preceding year are more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account in the budget. The annual budget shall also take into account the estimated net available cash income for the year from the lease, operation or use of the Common Elements. The annual budget shall also provide for a Non-capital reserve and a Capital reserve, in reasonable amounts as determined by the Board. Each Unit Owner shall receive a copy of the proposed annual budget at least fifteen (15) days prior to the adoption thereof by the Board.

SECTION 2. ASSESSMENTS. Unless otherwise directed by the Board, on or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Unit Owner shall pay, as his respective monthly assessment for the Common Expenses, one-twelfth (1/12) of his proportionate share of the Common Expenses for such year as shown by the annual budget. Such proportionate share for each Unit Owner shall be in accordance with his respective ownership interest in the Common Elements as such ownership interest is adjusted from time to time in accordance with the Master Deed. Notwithstanding the above, no Unit Owner shall be responsible for payment of its Common Expense assessment until the Developer has delivered its first deed to the first purchaser of a Unit. The percentage of ownership and initial amount of Common Expenses payable with respect to each Unit is set forth on Exhibit "B" to the Master Deed, but such percentage and such amount may be adjusted as a result of a new annual Association budget or as otherwise permitted in the Master Deed and these By-laws, with such adjustments (whether upward or downward) being customarily implemented by the Board at the beginning of the Association's next fiscal year. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new monthly assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay each month the amount of its respective monthly assessment to the Managing Agent or as may be otherwise directed by the Board. No Unit Owner shall be relieved of its obligation to pay any assessment by abandoning or not using its Unit, the General Common Elements, or the Limited Common Elements.

SECTION 3. PARTIAL YEAR OR MONTH. For the first fiscal year of the Association, the annual budget shall be as approved by the First Board prior to the conveyance of any Unit by the

Developer to any individual purchaser thereof. If such first fiscal year, or any succeeding fiscal year, is less than a full year, then the monthly assessment for each Unit Owner shall be proportionate to the number of months and days in such period covered by such budget.

SECTION 4. ANNUAL REPORT. Within ninety (90) days after the end of each fiscal year covered by an annual budget, or as soon thereafter as shall be practicable, the Board shall cause to be furnished to each Unit Owner, an itemized accounting of the Common Expenses for the preceding year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves.

SECTION 5. SUPPLEMENTAL ASSESSMENTS. In the event that during the course of any year, it shall appear to the Board that the monthly assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated Common Expenses for the remainder of such year, or if there shall be any non-recurring Common Expenses or any Common Expenses not set forth in the annual budget as adopted, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of the year, or such non-recurring Common Expenses or other Common Expenses, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a supplemental assessment for Non-capital Expenses shall be made against each Unit Owner (and, with respect to a supplemental Capital Assessment, the board shall propose an amount and the members shall promptly vote on such proposal) for its proportionate share thereof, provided, however, that expenditures arising from maintenance of, repairs to and replacements within the Limited Common Elements may be assessed, in whole or in part, to the Unit Owners benefitted by such Limited Common Elements, as provided under Article VIII of these By-laws.

SECTION 6. EXPENDITURES. Except for the Initial Management Agreement described in Article II, Section 10(c) hereof, if any, and any other expenditures and contracts specifically authorized by the Master Deed and these By-laws, the Board shall not incur any expenditures in excess of Ten Thousand Dollars (\$10,000) unless required for emergency repair, protection or operation of the Common Elements, nor enter into any contract of more than five (5) years duration without the prior approval of Unit Owners owning not less than two-thirds (2/3) of the total undivided ownership of the Common Elements. Notwithstanding the foregoing, any agreement for the professional management of Victorian Gardens Condominium Association, Inc. shall be subject to the provisions of subparagraph 9(c) of the Master Deed.

SECTION 7. LIENS.

(a) It shall be the duty of every Unit Owner to pay its proportionate share of the Common Expenses as provided in the Master Deed and as assessed in the manner herein provided.

(b) If any Unit Owner shall fail or refuse to make any such payment of the Common Expenses within ten (10) days of when due, the amount thereof, together with a late fee or charge in such amount as is prescribed from time to time in the rules and regulations of the

Association as promulgated by the Board, and further together with interest on such late Common Expense payment at the maximum contract rate per annum permitted by applicable law, or such lesser rate as approved by the Board, from and after the date on which said Common Expenses become due and payable (provided that such interest, but not the late charge, will be waived if the Common Expenses are paid within thirty (30) days, excluding the ten (10) day grace period, after the date on which said Common Expenses are due and payable), shall, without necessity of Recording any lien instrument, automatically constitute a lien, enforceable by the Board, on the interest of such Unit Owner in the Property and its Unit, provided, however, that the Board, at its option, may Record a notice of such lien to provide public notice of its existence. If any of such Common Expenses remain unpaid forty-five (45) days after the date on which the Common Expenses are due (excluding the ten (10) day grace period), the Board, at its option, may accelerate payment of all Common Expenses to be paid by the defaulting Unit Owner for the balance of the fiscal year of the Association, and the same will be due and payable immediately and will bear interest at the aforesaid rate from the date of acceleration until paid, and all such amounts shall constitute a lien on the Unit as aforesaid. Such lien in favor of the Association shall be subordinate to the lien of any First Mortgage which is Recorded prior to the date such lien for unpaid Common Expenses attached. If such First Mortgagee with a First Mortgage which is Recorded prior to the date such lien for unpaid Common Expenses attached, obtains title to a Unit or any other interest in the Property by reason of foreclosure or deed in lieu of foreclosure, such First Mortgagee, its successors or assigns, shall take such Unit or other interest in the Property free of any claims for unpaid Common Expenses, except for the amount of said proportionate share of such Common Expenses which becomes due and payable from and after the date on which such First Mortgagee either takes possession of the Unit or the interest encumbered by such First Mortgage, or accepts a conveyance, transfer or assignment of the Unit or of any interest therein (other than as security) in lieu of any foreclosure of such First Mortgage, or forecloses or files suit to foreclose its First Mortgage or causes a receiver to be appointed to take possession of the Unit. This provision shall not prevent the Association from enforcing any rights to which it is entitled against the prior Unit Owner. The provisions of this Section 7(b) shall not be amended, modified or rescinded without the prior written consent of all First Mortgagees who are the holders or owners of a First Mortgage Recorded prior to the date of such amendment, modification or rescission.

(c) The Association or its successors and assigns, or the Board or its agents, shall have the right to maintain a suit to foreclose any such lien, and there shall be added to the amount due the costs of said suit and other fees and expenses, together with legal interest and reasonable attorneys' fees to be fixed by the court. The Board or the Association shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Act, the Master Deed or these By-laws, or as are otherwise provided or permitted at law or in equity, for the collection of all unpaid assessments.

(d) A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

SECTION 8. RECORDS AND STATEMENT OF ACCOUNT.

(a) The Board shall cause to be kept detailed and accurate records, in chronological order, of the receipts and expenditures affecting the Common Elements and Limited Common Elements, specifying and itemizing the Common Expenses incurred. Such records and the vouchers authorizing the payments involved shall be available for examination by the Unit Owners at convenient hours during weekdays. Payment vouchers may be approved in such manner as the Board may determine.

(b) The Board shall, upon receipt of ten (10) days written notice to it or the Association and, if desired by the Board, upon payment of a reasonable fee, furnish to any Unit Owner a statement of its account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

SECTION 9. STATEMENT OF ACCOUNT IN CASE OF A PROPOSED SALE. In the event of a proposed sale of a Unit by a Unit Owner, and within ten (10) days after receipt of a written request from a Unit Owner (together with payment of a reasonable fee, if any, set by the Board), the Board shall provide such Unit Owner with a statement containing the following information:

(a) The status of said Unit Owner's account and the amount of any unpaid assessments or other charges due and owing from the Unit Owner;

(b) A brief description of any expenditures for major repairs, alterations, additions, or improvements to the Common Elements which are anticipated by the Board for the period of twelve (12) months from the date of the statement; and

(c) The status and amount of any and all capital reserves.

SECTION 10. DISCHARGE OF LIENS. The Board may cause the Association to discharge any mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Property or the Common Elements, rather than a lien against only a particular Unit. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason of such lien.

SECTION 11. HOLDING OF FUNDS. All funds collected hereunder shall be held and expended for the purposes designated herein and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or unpaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the percentages set forth in Exhibit "B" to the Master Deed.

ARTICLE VII
USE AND OCCUPANCY RESTRICTIONS

SECTION 1. GENERAL.

(a) Each Unit Owner at its own expense shall maintain its Unit in good condition and in good order and repair. Subject to the provisions of the Master Deed and these By-laws, no part of the Property may be used for purposes other than the related common purposes for which the Property was designed except for the streets which provide vehicular and pedestrian access to the Property and for the parking areas, if any, which shall be used for vehicular parking purposes.

(b) The Common Elements shall be used only by the Unit Owner and its guests, tenants, customers, invitees and licensees and shall be used only for access and ingress to and egress from the respective Units and for such other purposes incidental to the use of the Units; provided, however, that any parking areas, Association management office, receiving rooms, storage areas, maintenance areas, and areas designated for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession, license or easement presently in existence or entered into by the Board at some future time affecting any part or all of said Common Elements.

Without limiting the generality of the foregoing provisions of this Section 1, use of the Property by the Unit Owners shall be subject to the following restrictions and to the rules and regulations adopted or approved by the Board from time to time:

(1) Nothing shall be stored in the Common Elements without prior consent of the Board except as otherwise herein expressly provided;

(2) Nothing shall be done to any Unit or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property or cause the cancellation of insurance on other Units or on the Common Elements without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in its Unit or in or on the Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common Elements, or which will be in violation of any law;

(3) No waste shall be committed in or on the Common Elements;

(4) Subject to Developer's rights under the Master Deed and Section 4 of this Article VII, no sign of any kind shall be hung or displayed to the public view on or from any Unit or the Common Elements without the prior written consent of the Board or the written consent of the Managing Agent acting in accord with the Board's direction;

(5) No Unit Owner shall display, hang, store, or use any clothing, sheets, blankets, laundry or other articles outside its Unit, or in any place from which the same

may be visible from the outside of its Unit (other than draperies, curtains or shades of a customary nature and appearance, subject to the rules and regulations of the Board), or paint or decorate or adorn the outside of its Unit or install outside its Unit any canopy or awning or outside radio or television antenna, or other equipment, fixtures, or items of any kind, without the prior written consent of the Board or the prior written consent of the Managing Agent, acting in accordance with the Board's direction. The foregoing restriction as to use and occupancy shall not be construed to prohibit a Unit Owner from placing and maintaining outdoor furniture and decorative foliage of a customary nature and appearance on a balcony, patio, deck or terrace constituting Limited Common Elements for such Unit Owner's Unit;

(6) No unlawful noxious or offensive activity shall be carried on around or in any Unit or on or in the Common Elements nor shall anything be done therein or thereon which in the reasonable judgment of the Board either is or may be or become an annoyance, noise, disturbance or nuisance to the other Unit Owners or other persons of which unreasonably interferes with other Unit Owners' use of their Units or the Common Elements;

(7) Except as expressly provided in the Master Deed or in these By-laws, nothing shall be altered or constructed in or removed from the Common Elements, except with the prior written consent of the Board;

(8) No structure of a temporary character, trailer, tent, shack, garage, barn, or other out-building shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the construction and development of the Property by the Developer and in connection with the repair or rebuilding of the Buildings or any portion thereof;

(9) Parking and use of vehicles (including motorcycles) in driveways, parking areas, if any, and on streets shall be subject to the rules and regulations of the Board applicable thereto;

(10) Except within individual Units, no planting, transplanting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Property, except as approved by the Board;

(11) Units are to be made available by Unit Owners for regular interior and exterior treatment for pest control;

(12) Without limiting its rule-making authority under the Master Deed, these By-laws or the rules and regulations of the Board or the Association, the Board is specifically authorized, in its discretion, to assign and to reassign to a particular Unit Owner storage areas, if any, and parking spaces, if any, which are located on the Common Elements.

SECTION 2. ANIMALS. No animals shall be raised, bred or kept in any Unit for any commercial purpose. Household pets of Occupants shall be kept in strict accordance with the

administrative rules and regulations relating to household pets from time to time adopted or approved by the Board, provided that any such pet shall not in the judgment of the Board constitute an unreasonable annoyance or disturbance to others.

SECTION 3. TRASH. Trash, garbage and other waste shall be kept only in sanitary containers, and shall be disposed of in a clean and sanitary manner in strict accordance with the rules and regulations adopted or approved by the Board from time to time.

SECTION 4. USE BY DEVELOPER. During the period of sale of any Unit by the Developer, the Developer and its respective agents, employees, successors, assigns, contractors, subcontractors, brokers, licensees, invitees and the respective agents and employees thereof shall be entitled to use, parking, access, ingress to and egress from the Building, Property, and Common Elements, without charge, as may be required for purposes of the sale of Units and other activities of the Developer on or about the Property and Building. While the Developer owns any Units and until each Unit sold by it is occupied by the purchasers thereof, the Developer and its respective agents and employees and the respective agents and employees thereof, may use and show one or more of such unsold or unoccupied Units or a portion of the Common Elements, without charge, as a sales office, administrative office, management office or for other uses and offices incidental to the Developer's use of the Building and may further use and display such customary signs, banners, equipment and lighting in connection therewith as the Developer may see fit. This section may only be amended or modified with the express written consent of the Developer.

SECTION 5. STORAGE. Articles of personal property belonging to any Unit Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall not be stored or kept in the corridors, hallways, or other common areas, except in the common storage area, if any, and in the storage lockers, if any, specifically designated by the Board or the Managing Agent, acting in accordance with the Board's direction, for use by such Unit Owner.

SECTION 6. WIRING. No Unit Owner shall overload the electrical wiring in the Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others, or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior written consent of the Board or the prior written consent of the Managing Agent, acting in accordance with the Board's direction.

ARTICLE VIII
MAINTENANCE, REPAIRS AND REPLACEMENTS

SECTION 1. RESPONSIBILITY FOR MAINTENANCE, REPAIRS AND REPLACEMENTS. Each Unit Owner, at its own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within his own Unit, including and together with the furnace, HVAC system, water heater and other equipment serving only his Unit. In addition, a Unit Owner is responsible for the maintenance, repair and replacement of all equipment (including furnace, HVAC system and water heater) whether located within or without its Unit and whether or not forming a part of the Common Elements, if such equipment serves only such Unit Owner's Unit, and including pipes, ducts, flues, chutes, conduits, and wires located outside of the boundary line of the Owner's Unit. Subject to the rules and regulations of the Association, each Unit Owner hereby is granted an easement over and across the Common Elements for the purpose of maintaining, repairing and replacing all equipment for which Unit Owner is responsible. Except as otherwise set forth herein or in the Master Deed, maintenance of, repairs to and replacements within the Common Elements shall be the responsibility of and shall be furnished by the Association. The cost of maintenance of, repairs to and replacements within the common Elements shall be part of the Common Expenses, subject to the provisions of these By-laws and the rules and regulations of the Association. However, at the discretion of the Board, maintenance of, repairs to and replacements within the Limited Common Elements may be assessed in whole or in part to Unit Owners benefited thereby, and further, at the discretion of the Board, the Board may direct Unit Owners who stand to be benefited by such maintenance of, repairs to and replacement within the Limited Common Elements to arrange for such maintenance, repairs and replacement in the name and for the account of such benefited Unit Owners, to pay the cost thereof with their own funds, and to procure and deliver to the Board such lien waivers and contractor's and subcontractor's sworn statements as may be required to protect the Property from all mechanics' or materialmen's lien claims that may arise therefrom.

SECTION 2. BOARD'S AUTHORITY TO MAINTAIN AND REPAIR. In addition to the discretionary authority provided herein for maintenance of all or any portion of the Common Elements, the Board shall have the authority to maintain and repair any Unit, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Elements or preserve the appearance and value of the Property, and the Unit Owner of said Unit has failed or refused to perform said maintenance or repair directed by the Board; and the Board shall have the right to levy a special assessment against the Unit Owner of such Unit for the cost and expenses incurred for such necessary maintenance or repair.

SECTION 3. DAMAGE TO COMMON ELEMENTS. If, due to the act or negligence of a Unit Owner, or of its agent, servant, tenant, invitee, or licensee, damage shall be caused to the Common Elements or to a Unit or Units owned by others, and maintenance, repair or replacement are required, the cost of which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage or such maintenance, repair and replacement as may be determined by the Association, and the cost of such damage shall be deemed to be a special assessment against such Unit Owner's Unit; however, the provisions of this Section are subject to the provisions of

Paragraph 15 of the Master Deed providing for waiver of subrogation rights with respect to casualty damage insured against by reason of policies of insurance maintained by the Board.

SECTION 4. AUTHORIZATION FOR ACCESS TO UNITS AND LIMITED COMMON ELEMENTS. The authorized representatives of the Association or the Board, or the authorized representatives of the Managing Agent, with approval of the Board, shall be entitled to reasonable access to the individual Units and Limited Common Elements as may be required in connection with the preservation of any individual Unit or the Limited Common Elements in the event of an emergency, or in connection with maintenance of, repairs to or replacements within the Common Elements, or any equipment, facilities or fixtures affecting or serving other Units or the Common Elements, or in the making of any alteration required by any governmental authority.

ARTICLE IX CONTRACTUAL POWERS

SECTION 1. INTERESTED DIRECTORS. To the extent and under the circumstances permitted by Section 48-58-302 of the Tennessee Nonprofit Corporation Act or other applicable law, no contract or other transaction between the Association and one or more of its Directors, or between the Association and any other corporation, firm, association or other entity in which one or more of its Directors are directors or officers, or are financially interested, shall be either void or voidable for this reason alone, or by reason that such Director or Directors are present at the meeting of the Board which authorizes such contract or transaction, or that its or their votes are counted for such purpose. Except as otherwise provided by statute, common or interested Directors may be counted in determining the presence of a quorum or at a meeting of the Board, which authorizes any such contract or transaction.

SECTION 2. CONTRACTS, ETC. Unless otherwise directed by the Board, the President, Secretary or Treasurer, or any one of them, shall have the power to make and execute contracts and to sign deeds, bonds, mortgages, tax returns and other instruments on behalf of the Association. The President may authorize the execution of any such documents by such other officers, agents and employees as may be selected by them from time to time and with such limitations and restrictions as the authorization may provide.

SECTION 3. CHECKS, NOTES, ETC. All checks or other orders for payment of money and notes or other instrument evidencing indebtedness or obligations of the Association shall be signed by the President, Secretary or Treasurer or such other person or persons as the Board may from time to time designate.

ARTICLE X AMENDMENTS

Subject to the requirements of (i) Article I, Section 6 hereof requiring the consent of the Developer, (ii) Article VI, Section 7 hereof requiring the consent of certain lien holders under certain circumstances, and (iii) Part 2 of Chapter 60 of the Tennessee Nonprofit Corporation Act, as amended from time to time, pertaining to certain by-law amendments, these By-laws may be

amended, modified or rescinded, from time to time, by means of an amendment to the Master Deed, of which these By-laws constitute a part. Any such amendment, modification or rescission shall be valid and effective only upon the Recording thereof in the Office of the Register of Deeds of Hamilton County, Tennessee. Any such Recorded amendment, modification or rescission shall be maintained in the corporate records of the Association. These By-laws may not be amended, modified or rescinded so as to conflict with the provisions of the Act or the provisions of the Master Deed.

ARTICLE XI INDEMNIFICATION

SECTION 1. GENERAL. Subject to the provisions of Chapter 58, Part 5 of the Tennessee Nonprofit Corporation Act, as amended from time to time, the Association shall indemnify and hold harmless each of its Directors and officers, each member of any committee appointed pursuant to the By-laws of the Association, and the Board and the Developer against all contractual and other liabilities to others arising out of contracts made by, or other acts of, such Directors, Board, officers, committee members, or the Developer, on behalf of the Unit Owners, or arising out of their status as Directors, Board, officers, committee members, or the Developer, unless any such contract or act shall have been made fraudulently or with gross negligence, willful misconduct, bad faith, or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such Director, officer, Board, committee member, or Developer, may be involved by virtue of such persons being or having been such Director, officer, Board, committee member, or Developer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence, fraud or a crime in the performance of its duties as such Director, officer, Board, committee member, or Developer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence, fraud or a crime in the performance of its duties as such Director, officer, Board, committee member, or Developer.

SECTION 2. SUCCESS ON MERITS. To the extent that the Board, the Developer, a Director, an officer of the Association or a member of any committee appointed pursuant to these By-laws has been wholly successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 of this Article XI, or in defense of any claim, issue or matter therein, it shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

SECTION 3. ADVANCE PAYMENT. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case, upon receipt of a written undertaking by or on behalf of the person or entity seeking such indemnification or payment in

advance to repay such amount unless it shall ultimately be determined that such person or entity is entitled to be indemnified by the Association as authorized in this Article XI.

SECTION 4. MISCELLANEOUS. The Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Article, provided, however, that the liability of any Unit Owner arising out of any contract made by or other acts of the Directors, Board, officers, members of such committees, or Developer, or out of the aforesaid indemnity in favor of the Directors, Board, officers, members of such committees, or Developer, shall be limited to the same proportion of the total liability thereunder as said Unit Owner's percentage of interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements. Each Unit Owner's liability under any agreement made by the Directors, Board, officers, members of Association committees, Developer or the Managing Agent on behalf of the Unit Owners shall be limited to the same proportion of the total liability thereunder as its percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements. The indemnification provided by this Article XI shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board or otherwise, both as to action in their official capacity and as to action in another capacity while holding office. Such right to indemnification shall continue as to a person or entity who has ceased to be the Developer, Director, member of the Board, officer of the Association or a member of such committee, and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of such person or entity.

ARTICLE XII ADDITIONAL POWERS

In addition to, and in furtherance of, the powers referred to in these By-laws, the Association shall (a) have all the powers permitted to be exercised by a nonprofit corporation under the Tennessee Nonprofit Corporation Act, as amended, which are not inconsistent with the Act, and (b) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized, and to do every other act not inconsistent with law which may be appropriate to promote and attain the purposes set forth in the Master Deed, these By-laws or the Act. In the event of any conflict between the terms and provisions of these By-laws and the Master Deed, the provisions of the Master Deed shall control. These By-laws shall not be amended or altered in any manner inconsistent with the Master Deed or the Tennessee Nonprofit Corporation Act, as amended from time to time.

ARTICLE XIII
DEFINITION OF TERMS

The terms used in these By-laws to the extent they are defined in the Master Deed for Victorian Gardens Condominium Association, Inc., shall have the same definition as set forth therein, which Master Deed is recorded in the office of the Register of Deeds of Hamilton County, Tennessee. The words "member" or "members" as used in these By-laws means and shall refer to "Unit Owner" or "Unit Owners" as the case may be, as defined in the Master Deed.