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# DECLARTION OF COVENANTS, CONDITIONS AND RESTRICTIONS

# FOR

# 1120 CAHAL TOWNHOMES,

# A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

## (THIS IS A PLANNED UNIT DEVELOPMENT PURSUANT TO TENNESSEE CODE ANNOTATED § 66-27-103(b))

**THIS DECLARATION,** made and entered into by Timothy E. Turner and Leigh A. Turner, husband and wife (collectively, the "Developer").

**W I T N E S S E T H:**

**WHEREAS,** Developer is the owner of certain real property located at 1120 Cahal Avenue, Nashville, Davidson County, Tennessee, and described on Exhibit A attached hereto (the "Parcel"); and

**WHEREAS,** Developer intends to and does hereby submit the Parcel together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any way pertaining thereto (the "Property") to the provisions of the Tennessee Horizontal Property Act, Tenn. Code Ann. § 66-27-101 et seq., for the express purpose of establishing thereon a horizontal property regime with private elements to be known as 1120 Cahal Townhomes; and

**WHEREAS,** Developer further desires to establish said horizontal property regime with private elements for its own benefit and for the mutual benefit of all future owners or occupants of the Property or any part thereof, and intents that all future owners, occupants, mortgagees, and any other persons hereinafter acquiring any interest in the Property, shall hold such interest subject to certain rights, easements and privileges in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof, as hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspects of residence on the Property, and are established for the purchase of enhancing the value, desirability and attractiveness of the Property.

**NOW, THEREFORE,** Developer declares as follows:

1. **Definitions.** As used herein, unless the context otherwise requires:

(a) "Act" means the Horizontal Property Act of the State of Tennessee, Tenn. Code Ann., Sections 66-27-101, et. seq.

(b) "Association" means 1120 Cahal Townhomes, Inc., a Tennessee nonprofit corporation.

(c) "Board" means the Board of Directors of the Association.

(d) "Building" or "Buildings" means the buildings located on the Parcel and forming part of the Property and containing the Units. The location of the "Building" or "Buildings" is and shall be delineated on the Plat.

(e) "Bylaws" means the Bylaws of the Association attached hereto as Exhibit C and made part hereof, as amended from time to time. For purposes of the Act, all provisions contained in this Declaration dealing with the administration and maintenance of the Property shall be deemed to be a part of the Bylaws.

(f) "Common Elements" means and includes General Common Elements and Limited Common Elements as those terms are as defined herein.

(g) "Declaration" means this instrument, as amended from time to time.

(h) "General Common Elements" means all of the Property, except the Units, Private Elements, and Limited Common Elements. The General Common Elements shall include the Party Wall.

(i) "Limited Common Elements" means any portion of the General Common Elements contiguous to and serving a single Unit or a certain number of Units to the exclusion of other Units, as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful Occupants of such Unit or Units either in this Declaration, on the Plat, or by later decision of all of the Unit Owners. The area of the Limited Common Elements for each Unit is as shown on Plat.

(j) "Majority" or "majority of the Unit Owners" means the owners of more than fifty percent (50%) of the voting rights of the Unit Owners.

(k) "Occupant" means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

(l) "Parcel" means the parcel or tract of real estate described on Exhibit "A" attached to this Declaration.

(m) "Party wall" shall mean the foundation and all internal components that make up any common wall or other structure that is common to both Units.

(n) "Person" means a natural individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

(o) "Plat" means the map or drawing of the Parcel submitted to the provisions of the Act showing the number of each Unit, expressing its area, location and other data necessary for identification including but not limited to the area of the Private Elements upon which the Unit is located, said Plat, being attached hereto as Exhibit B. Upon any annexation of any additional phases into the provisions hereof, Plat shall also mean the plat for the additional phase or phases so annexed.

(p) "Private Elements" means the lot area upon which the Unit is located. Exclusive ownership in fee simple and use of the Private Elements for each Unit is reserved to such Unit. The area of the Private Elements for each Unit is shown on the Plat.

(q) "Property" means all the land and space comprising the Parcel, and all improvements and structures thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.

(r) "Record" or "Recording" refers to the record or recording in the office of the Register of Deeds of Davidson County, Tennessee.

(s) "Unit" means a portion of the Property as shown and designated in the Plat for separate ownership and shall include the Private Elements and the Buildings and other improvements now or hereafter located thereon, but shall not include the Party Wall. The Units are identified by number on the Plat and may be held and conveyed by reference to such number. Conveyance of a Unit shall automatically convey the undivided membership of each Unit Owner in the Association. Each Unit is numbered as shown on the Plat. Any Unit may be jointly or commonly owned in any estate recognized under applicable law. The term "Unit" as used in this Declaration shall have the same meaning as the term "Apartment" as used in the Act.

(t) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit, and shall be deemed the same as a "co-owner" under the Act. Unless specifically provided otherwise herein, the Developer shall be deemed a Unit Owner so long as the Developer is the title holder of any Unit.

2. **Submission of Property to the Act.** The Developer, by recording this Declaration, does hereby submit and subject the Property to the provisions of the Act and hereby

establishes a horizontal property regime with private elements as authorized and described in the Act and to be hereafter known as 1120 Cahal Townhomes.

3. **Plat.** The Plat sets forth the numbers, areas, locations, and other data as required by the Act.

4. **Units.** The legal description of each Unit shall consist of the identifying letter or number of such Unit as shown on the Plat. Every deed, lease, mortgage, deed of trust or other instrument shall legally describe a Unit by its identifying letter or number as shown on the Plat, and every such description shall be deemed good and sufficient for all purposes, as provided in the Act. Except as provided by the Act, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide, partition or in any other manner cause such Owner's Unit to be separated or divided into any tracts or parcels different from the whole Unit as shown on the Plat.

5. **Administration and Operation of the Property.**

**(a) Association of Unit Owners.** There has been or will be formed an Association having the name of 1120 Cahal Townhomes, Inc., a Tennessee nonprofit corporation, which Association shall be the governing body for all of the Unit Owners and shall be operated to provide for the maintenance, repair, replacement, administration, operation and care of the Property as provided in the Act, this Declaration and Bylaws. The Unit Owners shall each be members of the Association, with each Unit holding an undivided membership interest in the Association which shall be appurtenant to such Unit, each such membership interest appurtenant to a Unit being in an equal share, subject to the provisions concerning voting hereinafter set forth. The Association shall be governed according to the provisions contained in the Bylaws. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the use and benefit of Unit Owners in accordance with the provisions of the Declaration and Bylaws. Each Unit Owner shall be a member of the Association so long as such Owner is a Unit Owner. A Unit Owner's membership shall automatically terminate when such Owner ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall automatically succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be divided among the respective Unit Owners with one (1) vote granted to each Unit.

**(b) Use by Developer.** During the period of sale by the Developer, the Developer and the Developer's agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access, ingress to and egress from the Buildings and Property as may be required for purposes of sale of the Units and the Developer and its employees may maintain customary signs in connection therewith.

**(c) Non-Liability of the Directors, Board and Officers.** Neither the directors, Board, nor officers of the Association, shall be personally liable to the Unit Owners for

any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors, Board or officers, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Unit Owners shall indemnify and hold harmless each of the directors, Board or officers, and their respective heirs, executors, administrators, successors and assigns in accordance with the Charter of the Association and Bylaws.

**(d) Interest of Association in Common Elements.** Ownership of the Common Elements shall be vested in the Association.

**(e) Rules and Regulations.** The Rules and Regulations attached hereto as Exhibit E shall be binding upon the Unit Owners unless and until such time as they are amended or repealed by the Board.

6. **Board's Determination Binding.** In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of the Declaration or Bylaws, the determination thereof by the Board shall be final and binding on each and all such Unit Owners.

7. **Use of the Common Elements.** Except as hereinafter set forth, each Unit Owner shall have the right to use the Common Elements (except the Limited Common Elements) in common with all other Unit Owners, as may be required for the purposes of occupancy and enjoyment of the respective Unit owned by such Unit Owner. Each Unit Owner shall have the right to the exclusive use and possession of the Private Elements and Limited Common Elements attributable to the Unit. Such rights to use the Property, shall be subject to and governed by the provisions of the Act, Declaration, Bylaws and any rules and regulations established by the Association.

8. **Storage Areas and Parking Spaces.** Parking and storage areas shall be subject to such rules and regulations as the Board may prescribe, if applicable.

9. **Assessments.** Each Unit Owner shall pay an equal share of the expenses of the administration and operation of the Common Elements (but not the Limited Common Elements) and of any other expenses incurred in conformance with the Declaration and Bylaws (which expenses are herein sometimes referred to as "Common Expenses"), including, but not limited to, the maintenance and repair thereof and any and all replacements and additions thereto. Payment of Common Expenses, including any prepayment thereof required by any contract for a sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. If any Unit Owner shall fail or refuse to make any such payment of the Common Expenses when due, the amount thereof, together with interest thereon at the maximum rate then allowed by applicable law, after said Common Expenses become due and payable, shall constitute a lien on the interest of such Unit Owner in the Unit as provided in the Act. Each assessment for Common Expenses against a Unit shall also be the personal obligation of the Unit Owner at the time the assessment is due. A successor in title to a Unit shall not be personally

obligated to pay any unpaid assessments for Common Expenses which have been levied against a Unit unless such successor in title expressly assumes the payment of the same, provided, however, any lien encumbering a Unit as above described shall not be affected by transfer of a Unit.

10. **Special Assessments.** In addition to annual assessments for Common Expenses authorized above, if any, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Elements, or any other expense properly the responsibility of the Association, provided that any such assessment shall have the assent of all of the votes of Unit Owners.

11. **Enforcement of Liens.** In the event any Unit Owner fails to maintain such Owner's Unit, including the Private Elements or Limited Common Elements attributable to such Unit, or in the event any Unit Owner fails to pay such Owner's proportionate share of any Common Expense or other assessment when such is due, then in any such event the Board may after ten (10) days' notice to the defaulting Unit Owner, perform such maintenance, advance and pay such sum, or do any other reasonable act necessary to cure such a default. The Association shall have a lien against the Unit of the defaulting Unit Owner securing payment of the sums expended or advanced, and shall be entitled to enforce such lien by filing suit for foreclosure or other remedies in a court of competent jurisdiction. In the event the Association is successful in such suit, it shall be entitled to recover reasonable attorney fees and costs incurred in such suit and enforcement of its rights.

12. **Mortgage and Deed of Trust Protection.** The lien for Common Expenses as defined in the Bylaws shall be subordinate to the lien of a recorded mortgage or deed of trust of the interest of such Unit Owner, except for the amount of the proportionate share of such Common Expenses that become due and payable from and after the date on which the mortgagee or beneficiary thereunder either takes possession of the Unit encumbered thereby, accepts a conveyance of any interest therein (other than as security) or forecloses its mortgage or deed of trust. This Section shall not be amended, changed, modified, or rescinded without the prior written consent of all mortgagees and deed of trust beneficiaries of record.

13. **Mortgages and Deeds of Trust.** Each Unit Owner shall have the right, subject to the provisions herein, to mortgage his Unit, together with his respective ownership interest in the Association. No Unit Owner shall have the right or authority to make or create, or cause to be made or created, from the date hereof, any mortgage, deed of trust or other lien on or affecting the Property or any part thereof, except only to the extent of such Owner's Unit and the interest in the Association corresponding thereto.

14. **Separate Real Estate Taxes.** Real estate taxes shall be separately taxed to each Unit Owner for such Owner's Unit, its Private Elements, Limited Common Elements, and its corresponding interest in the Association, as provided in the Act. In the event that such taxes for

any year are not separately taxed to each Unit Owner, but rather are taxes on the Property as a whole, then each Unit Owner shall pay such Owner's proportionate share thereof in accordance with such Owner's respective percentage of ownership interest in the Association, and, in said event, such taxes shall be a Common Expense.

15. **Maintenance, Repairs, and Replacements.**

**(a) Obligations of Unit Owners.** Each Unit Owner, at such Owner's expense, shall be responsible for all maintenance of, repairs to, and replacements within and to such Owner's Unit, Private Elements and Limited Common Elements and shall pay all such expenses associated therewith. Should the Unit Owner fail or refuse to maintain, repair or replace the exterior of his Unit, its Private Elements and/or within its Limited Common Elements in such a manner as to endanger the life or the Unit Owners or any other person with a legal right to access the Property, the Board or any other Unit Owner may, after ten (10) days' notice to the Unit Owner, cause said maintenance of, repairs to or replacements be made to the exterior of the Unit, its Private Elements and/or within its Limited Common Elements. Upon performance of the maintenance, repairs, or replacements, the other Unit Owner shall have a lien against the Unit of the defaulting Unit Owner securing payment of the sums expended or advanced and may perfect remedies as set forth in this Declaration.

**(b) Obligations of Association.** The Association shall be responsible for maintenance of and repairs within the Common Elements, other than Limited Common Elements.

**(c) Loss Attributable to Unit Owner.** Notwithstanding the foregoing, if, due to the act or neglect of a Unit Owner, or the agent, servant, tenant, family member, invitee, licensee or household pet thereof, damage shall be caused to the Common Elements, or maintenance, repair or replacement are required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage or such maintenance, repair and replacements, as may be determined by the Association, to the extent not covered by the Association's insurance or sufficient proceeds are not collected from the insurance carrier.

16. **Architectural Control, Alterations, Additions or Improvements.**

**(a) Architectural Control.** No structure may be erected, placed or altered on any Private Elements or Limited Common Elements, and no building permits may be obtained, until the construction plans and building specifications and a plan showing (i) the location of improvements on the Private Elements; (ii) the grade elevation (including rear, front and side elevations); (iii) the type of exterior material and roof material (including delivery of samples thereof); (iv) the color of paint or stain to be applied to any exterior surfaces and the color of the roof material (including delivery of samples thereof); and (v) the location, size and composition of the driveway, shall have been approved in writing by all Unit Owners.

**(b) Alterations, Additions or Improvements.** Except as provided specifically herein, no alteration of any Common Elements, Limited Common Elements or Private Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the other Unit Owner. Prior approval shall also be required for the construction completion schedule and rules for cleanliness during construction. The Board may authorize and charge as common expenses alterations, additions and improvements of the Common Elements and Private Elements as provided in the Bylaws. Notwithstanding any other provision in this Section, a Unit Owner may make alterations, additions or improvements wholly within the interior of the Unit of the Unit Owner without the prior written approval of the other Unit Owner.

17. **Decorating.** Each Unit Owner, at such Owner's expense, shall furnish and be responsible for all decorating and maintenance of such Owner's Unit, and Private and Limited Common Elements serving such Unit.

18. **Encroachments and Easements.** If any portions of the Common Elements shall actually encroach upon any Unit or its Private Elements or Limited Common Elements, or if any Unit or its Private Elements or Limited Common Elements shall actually encroach upon any portions of the Common Elements, or if any Unit or its Private Elements or Limited Common Elements shall actually encroach upon the other Unit or its Private Elements or Limited Common Elements as shown on the Plat, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved, to the extent of such encroachments, so long as the same shall exist.

The Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, and other purposes reasonably necessary or useful for the proper maintenance or operation of the horizontal property regime.

The Units and Common Elements shall have and be subject to the following easements:

(a) An easement shall exist for the maintenance, repair and replacement of any and all pipes, wires, conduits, or other utility lines running through or around either Unit, which facilities serve more than one Unit and are part of the Common Elements.

(b) An easement shall exist for any part of a roof, eave, cornice and gutter, as shall encroach over or upon either Unit or the Common Elements, as of final construction. Said easement shall also exist for the maintenance, repair and replacement of said encroaching elements.

(c) Easements for Utilities and for ingress, egress and maintenance in favor or any public utility providing public utility service to the Units.

(d) An easement exists for the maintenance and repair of the Common Elements.

(e) Easements for drainage for the Units, as initially constructed.

19. **Use and Occupancy Restrictions.** Subject to the provisions of the Bylaws, no part of the Property may be used for purposes other than private single family housing and the related common purposes for which the Property was designed and as allowed by municipal zoning laws. Any Unit lease shall be in writing, shall be structured so to maintain the integrity and property values of the Property, and shall be subject to this Declaration, as may be amended, and to the Bylaws. No Unit shall be rented on a daily, weekly or monthly basis.

No Unit or Common Elements or Limited Common Elements may be used in violation of the restrictions and provisions contained herein or in the Bylaws.

The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner. Developer is irrevocably empowered, notwithstanding anything herein to the contrary, to sell, lease or rent any Unit owned by Developer to any person approved by it. Developer shall have the right to transact, on the Property, any business deemed necessary by Developer to consummate the sale, lease or resale of the Units. As long as Developer owns a Unit, another Unit Owner shall not interfere with the sale of a Unit by Developer.

20. **Remedies.** In the event of any violation of the provisions of the Act, this Declaration, or the Bylaws or rules and regulations of the Board or Association by any Unit Owner (either by the Unit Owner's own conduct or by the conduct of any other Occupant of such Owners Unit) the Association, or its successors or assigns, or the Board, or its agent, or the other Unit Owner, shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, Bylaws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to sell the Unit through judicial process as provided hereinbefore, or for any combination of remedies, or for any other relief. All expenses of the Board or other Unit Owner in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the maximum rate of interest then allowed by applicable law, until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of such Owner's personal property in such Owner's Unit or located elsewhere in the Property, provided, however, that such lien shall subordinate to the lien of a recorded mortgage or deed of trust on the interest of such Unit Owner, except for the amount of the proportionate share of said common expenses which

become due and payable from and after the date on which the said mortgage or deed of trust owner or holder either takes possession of the Unit, accepts a conveyance of any interest therein (other than as a security) or files a suit to foreclose its mortgage or deed of trust. In the event of any such default by any Unit Owner, the Board and the manager or other agent of the Board, if so authorized by the Board, or the other Unit Owner, shall have the authority to correct such default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board or other Unit Owner. This paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of record of mortgages and deed of trust against Units.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board or other Unit Owner the right, in addition to any other rights provided for in this Declaration to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

If any Unit Owner (either by such Owner's conduct or by the conduct of any other Occupant of the Unit) shall violate the Act, or any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Board, and if such default or violation shall continue for ten (10) days after notice to the Unit Owner in writing from the Board, or other Unit Owner, or shall occur repeatedly during any ten (10) day period after such written notice or request to cure such violation from the Board or other Unit Owner, then the Board or other Unit Owner, shall have the power to issue to said defaulting Owner a notice in writing and thereupon an action in equity may be filed by the Board, or other Unit Owner, against said defaulting Owner for a decree of mandatory injunction against such defaulting Owner or Occupant.

21. **Amendments.** The provisions of this Declaration may be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission, signed by a majority of the Unit Owners and acknowledged, provided, however, that all lien holders of record have been notified by certified mail of such change, modification or rescission, and an affidavit by the secretary of the Association certifying to such mailing is made a part of such instrument.

The change, modification or rescission, whether accomplished under the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the office of the Register of Deeds of Davidson County, Tennessee; provided, however, that no provision in this Declaration may be changed, modified or rescinded so to conflict with the provisions of the Act.

Notwithstanding the above, the Developer shall have the right to make and record any necessary amendment to this instrument for the express purpose of completion of development

or correction of clerical errors, or as may be required to obtain FHA/VA, FNMA and/or FHLMC approval for the horizontal property regime.

22. **Notices.** Notices provided for in the Act, Declaration or Bylaws shall be in writing, and shall be addressed if to a Unit Owner, to the address of such Owner's Unit, and if to the Association or Board, as the case may be, to the registered office, as set forth in Charter of the Association or to such other address as may be designated in writing by the Association or Board from time to time. Unit Owners, the Association, and/or the Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners and the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or standard overnight delivery service, or when delivered in person with written acknowledgment of the receipt thereof.

Upon written request to the Board, the holder of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose Unit is subject to such mortgage or trust of deed.

23. **Severability and Enforceability.** If any provision of the Declaration or Bylaws, or any section, sentence, clause, phrase, word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the Bylaws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration or the Bylaws shall be construed as if such invalid part was never included therein.

If it is found by any court having jurisdiction that this Declaration or the Bylaws are not enforceable under Tennessee law by reason of the adoption of the Tennessee Condominium Act of 2008, Tenn. Code Ann. §§ 66-27-201, et seq. (the "Condominium Act"), then the provisions of said Condominium Act shall apply to the Property and reference shall be made to such Condominium Act to determine the rights of the Unit Owners, Board, Association, and any other person or entity with respect to the Declaration and Bylaws.

24. **Perpetuities and Restraints on Alienation.** If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall be continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the Governor or the State of Tennessee holding office as of the date of this Declaration.

25. **Rights and Obligations.** Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All future Unit Owners and Occupants shall be subject to and shall comply with the

provisions of the Declaration. Any restrictions or rules in the Bylaws which are more than administrative in nature such as, but not limited to, reservations and future rights of the Developer, are hereby incorporated into and made a part of this Declaration by reference. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time an interest or estate in said land, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

All present and future Unit Owners, tenants and Occupants of a Unit shall be subject to, and shall comply with, the provisions of the Bylaws appended hereto and recorded herewith as they may be amended from time to time. The acceptance of a deed of conveyance, devised or of a lease to a Unit, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the said Bylaws and any rules and regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Unit Owner, tenant or Occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

The terms and conditions of this Declaration, Bylaws and rules and regulations may be incorporated by reference in, and become part of, the agreement between any mortgagee and any present or future Unit Owner who enters into such agreement with a mortgagee. When so incorporated any default in the terms and conditions of the Declaration, Bylaws and rules and regulations may be considered as a default by the mortgagee, whereupon said mortgagee, after exercising its option to declare a default, shall then have all of the rights and privileges arising as a result of a default under its agreement with said Unit Owner.

26. **Trustee as Unit Owner.** In the event title to any Unit is conveyed to a land title holding trust, under the terms of which all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder shall be considered Unit Owners for all purposes and they shall be responsible for payment of all obligations, liens, or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit. No claim shall be made against any such title holder trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of any such lien or obligation shall continue to be a charge or lien upon the Unit and the beneficiaries of such trust, notwithstanding any transfers or the beneficial interest of any such trust or any transfer of tile to said Unit.

27. **Condemnation.** In the event of a taking in condemnation or by eminent domain of a part of the Common Elements, the award made for such taking shall be payable to the Board for and on behalf of the Association and all mortgagees affected. If a majority of the Board in their discretion, with written consent of a majority of the mortgagees affected, approve the repair and restoration of such Common Elements, and the Board shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that the Board and the mortgagees do not approve the repair and commence restoration of such Common Elements within one hundred twenty (120) days after taking by the public or private authority, the Board shall disburse the net proceeds of such award on the basis of such Unit's percentage of ownership in the Association to the Unit Owners and the mortgagees as their interests may appear.

28. **Rights Reserved.** Each Unit Owner's right of enjoyment in the property commonly owned by the Association as herein created shall be subject to:

**(a)** The right of the Association, as provided in its Bylaws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for such period as it considers appropriate for any infraction of its published rules and regulations; and

**(b)** The right of the Association to charge reasonable fees for the use of the parts of the Common Elements; and

**(c)** The right of the Association to diminish in any way or to dedicate or transfer all or any part of the Common Elements to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Board; and

**(d)** The right of the Association to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it shall deem necessary for the proper servicing and maintenance of the Common Elements and the Units.

29. **Provisions Relative to Mortgagee's Rights and to Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Regulations.** Notwithstanding anything to the contrary contained in this Declaration, or in the Bylaws which are attached thereto, all terms, conditions and regulations which are now existing, or which may be amended from time to time, by the Federal Home Loan Mortgage Corporation ("FHLMC") or Fannie Mae ("Fannie Mae") pertaining to projects of this nature are hereby incorporated as terms and conditions of the Declaration and Bylaws and such terms or conditions are not inconsistent with the laws of the State of Tennessee as found in Tennessee Code Annotated, Section 66-27-101, et seq., as such may be amended.

Specifically, without limitation upon the foregoing, the following provisions shall be fully effective and controlling over any terms of the Declaration or Bylaws that are in conflict.

Any portions of such Declaration or Bylaws which are in conflict with this paragraph, or any portion of the FHLMC and Fannie Mae regulations pertaining to planned unit developments, are hereby deleted and the following rights or mortgagees are itemized as follows:

**(a)** A first mortgagee, and any insurer or guarantor of any mortgage or deed of trust, under a Unit at such party's request is entitled to a financial statement of the Association for the preceding fiscal year.

**(b)** Any first mortgagee, or other transferee, of a Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage, deed of trust foreclosure of the mortgage or deed of trust, or deed in lieu of foreclosure shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit, which accrue prior to the time such holder comes into possession of the Unit.

**(c)** Unless all of the first mortgagees (based upon one (1) vote for each mortgage owned), or owners (other than the Developer) of Units have given their prior written approval, the Association shall not be entitled to:

(i) Change the percentage interests of ownership of all or any Unit or Unit Owners, except that percentage ownership of the Association may be reduced due to the addition of a phase to the horizontal property regime as provided hereinabove.

(ii) Partition or subdivide any Unit or the Common Elements.

(iii) By act or omission seek to abandon the horizontal property regime or status of the Property, or encumber, sell or transfer the Common Elements, except for the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements.

(iv) Use hazard insurance proceeds for losses to any Property (whether to individual Units or Common Elements) for other than the repair, replacement, or reconstruction of such improvements, except as provided in Tenn. Code Ann. 66-27-118, in case of substantial loss to the Units and/or Common Elements to the horizontal property regime.

**(d)** Unit owners, first mortgage holders, and insurers or guarantors of any first mortgage shall have the right to examine the books, records, current copies of the Declaration and Bylaws, and rules and regulations of the Association during normal business hours and upon request.

**(e)** An adequate reserve fund for maintenance, repair and replacement of Common Elements which may be replaced on a periodic basis may be established and funded as necessary upon agreement of all Unit owners, by regular monthly payments rather than by special assessments.

**(f)** As set forth in Tenn. Code Ann., Section 66-27-120, all taxes, assessments and charges which may become liens prior to the first mortgage under the laws of the State of Tennessee shall relate only to the individual Unit and not to the horizontal property regime as a whole.

**(g)** No Unit Owner or any other party shall have priority over any rights of the first mortgagees of Units and/or Common Elements.

**(h)** Any agreement for professional management of the horizontal property regime, whether it be by the Developer, its successors and assigns, or any other person or entity, may be terminated or ninety (90) days' written notice and the terms of any such contract shall so provide and shall not be of a duration in excess of three (3) years. Prior to passage of control from the Developer, the Association shall not be bound, directly or indirectly, to contracts or leases unless there is a right or termination of such upon not more than ninety (90) days' notice without penalty.

**(i)** Upon written request, the Association shall give to any mortgagee of a Unit, FHLMC, Fannie Mae, any lending institution servicing such mortgages as are acquired by FHLMC or Fannie Mae, or any insurer or guarantor of a mortgage or deed of trust on a Unit, timely notice in writing of any loss to or the taking of the Common Elements if such loss or taking exceeds $10,000.00, or of any other condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage, a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, or any proposed action that requires the consent of a specified percentage of mortgagees. The Association may rely upon the information contained in the book entitled "Mortgages of Units" as must be established pursuant to the Bylaws, for a list of mortgagees to be notified hereby.

**(j)** The interest of a first mortgage in a mortgaged Unit shall be superior to the interest of any other person, group, partnership, corporation or entity of any kind, including any interest the Board, the Developer or any Unit Owner may have in any portion of the premises, regardless of the nature of the interest or the manner in which it is acquired.

**(k)** Notwithstanding the above, any first mortgage shall have all of the rights granted to a first mortgagee herein, and in addition shall have all of the rights granted to an institutional first mortgagee under its Deed of Trust, and under the laws of the State of Tennessee.

**(l)** A first mortgagee of a Unit Owner, upon written request, is entitled to written notification from the Association of any default in the performance by such Unit Owner of any obligation under this Declaration and/or Bylaws which is not cured within sixty (60) days.

**(m)** The casualty and liability insurance and fidelity bond coverage required to be maintained by the Association shall meet the requirements specified in **Fannie Mae Lending Guide**, Chapter Three, Part 5, "Insurance Requirements."

30. **Legal Opinion.** The legal opinion required in Tennessee Code Annotated Section 66-27-103 is attached hereto as Exhibit D.

**Signatures on Following Page**

**IN WITNESS WHEREOF,** the undersigned have executed this Declaration this the 24th day of April, 2014.

DEVELOPER

Timothy E. Turner

Leigh A. Turner

STATE OF TENNESSEE )
COUNTY OF DAVIDSON )

Personally appeared before me, the undersigned, a notary public in and for said county and state, **Timothy E. Turner**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at office, this the 24th day of April, 2014.

Notary Public

My commission expires: 3-21-2016

JAN CARTER
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY

STATE OF TENNESSEE )
COUNTY OF DAVIDSON )

Personally appeared before me, the undersigned, a notary public in and for said county and state, **Leigh A. Turner**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that she executed the within instrument for the purposes therein contained.

Witness my hand, at office, this the 24th day of April, 2014.

Notary Public

My commission expires: 3-21-2016

JAN CARTER
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY

## EXHIBIT A

## LEGAL DESCRIPTION

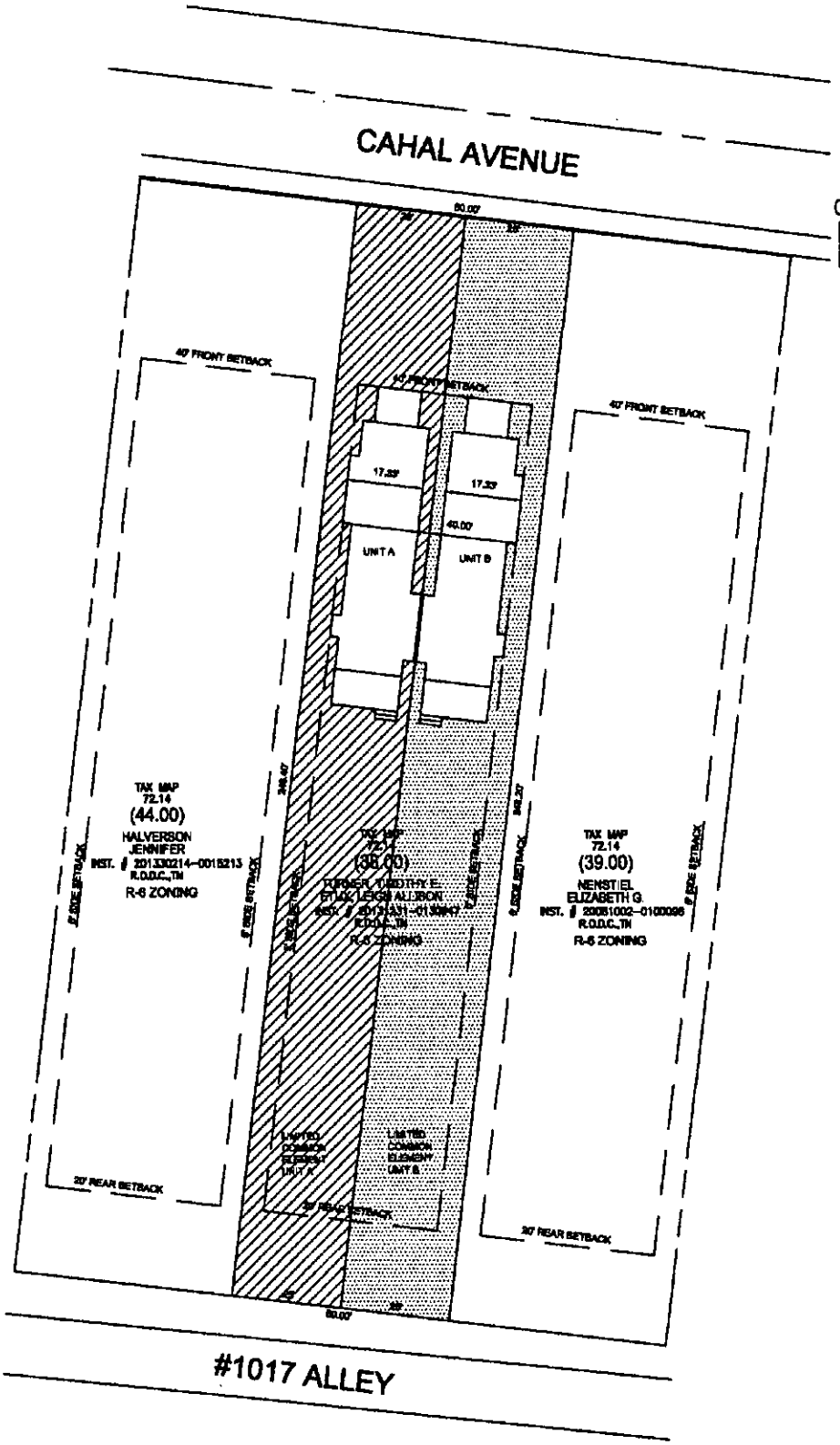
**Land in Davidson County, Tennessee, being Lot 14, as shown on the map entitled N.J. Gibson's Addition, Lot No. 2 of Cahal Plan, of record in Plat Book 161, page 165, Register's Office for Davidson County, Tennessee, to which plan reference is hereby made for a more complete and accurate legal description.**

**Together with that certain Grant of Easement conveyed to the owner of Lot 14 for a private right-of-way over Lot 13, of record in Instrument No. 200609906-0110286, said Register's Office.**

**Being the same property conveyed to Timothy E. Turner and Leigh Alison Turner, husband and wife, by deed from Benjamin Ruhoff, unmarried, of record in Instrument No. 20131231-0130947, recorded December 31, 2013, said Register's Office.**

**EXHIBIT B**

**PLAT**




THIS EXHIBIT WAS PREPARED FROM THE RECORDED DEED DESCRIPTION. THIS PLAN IS SUBJECT TO THE FINDINGS OF A CURRENT TITLE EXAMINATION. NO TITLE REPORT WAS PROVIDED.

UTILITIES SHOWN WERE TAKEN FROM PUBLIC AS-BUILT RECORDS AND FIELD LOCATION. THERE MAY BE UTILITIES OR EASEMENTS PRESENT THAT ARE NOT SHOWN ON THIS EXHIBIT. CONTACT THE TENNESSEE ONE CALL SYSTEM PRIOR TO ANY CONSTRUCTION OR DIGGING.

EXHIBIT MAP FOR:
1120 CAHAL AVENUE
LOT 14
N.J. GIBSON ADDITION OF LOT 2 OF CAHAL PLAN
BOOK 161 PAGE 165
PROPERTY LOCATED IN THE 7TH COUNCIL DISTRICT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE ON THE SOUTHERLY MARGIN OF CAHAL AVENUE.

PROPERTY ADDRESS:
1120 CAHAL AVENUE
NASHVILLE, TN 37206

PREPARED BY:
T-SQUARE ENGINEERING
2558 NASHVILLE HIGHWAY
COLUMBIA, TN 38401
PH: 931-489-2088
FAX: 931-489-2089
EMAIL: tim@tsquareengineering.com

T-SQUARE ENGINEERING
Consulting Civil Engineering
2558 NASHVILLE HIGHWAY*COLUMBIA, TN 38401* (931)-489-2088
TIM@TSQUAREENGINEERING.COM

# 1120 CAHAL TOWNHOMES
# NASHVILLE, DAVIDSON COUTNY
# TENNESSEE

P.N. 38.00

DATE: 04-11-2014

# EXHIBIT C

# BYLAWS

# EXHIBIT C

# BYLAWS OF 1120 CAHAL TOWNHOMES, INC.

## ARTICLE I.

## DEFINITIONS

The words defined in the Tennessee Horizontal Property Act, Tennessee Code Annotated, §§ 66-27-101 et. seq. (hereinafter referred to as the "Act"), and in the Declaration of the 1120 Cahal Townhomes (the "Declaration") shall have the same meaning in these Bylaws.

## ARTICLE II.

## ASSOCIATION

Section 1. Membership. Every Person who is the record owner of any Unit within the 1120 Cahal Townhomes, a Horizontal Property Regime with Private Elements (the "Property") shall be deemed to be a member of the Association. The words "Member" or "Members" as used in these Bylaws mean and shall refer to "Unit Owner" or "Unit Owners," as the case may be, as defined in the Declaration of Covenants, Conditions and Restrictions for 1120 Cahal Townhomes, a Horizontal Property Regime with Private Elements (the "Declaration"). Membership shall be appurtenant to and may not be separated from such fee interest ownership, and any transfer of a Unit shall operate automatically to transfer to the new record owner thereof the membership in the Association appurtenant thereto. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate that Member's membership. In the event that any Unit is owned jointly by two or more persons, each joint owner shall be a Member for as long as that person owns the joint interest in the Unit. Notwithstanding the foregoing, Developer may at any time assign, pledge, hypothecate or alienate its membership and/or rights as Developer herein, but any transfer by Developer of title to a Unit shall automatically transfer the membership in the Association appurtenant thereto, free and clear from any such assignment, pledge, hypothecation or alienation.

Section 2. Succession. The membership of each Member shall terminate when such Member ceases to be a Unit Owner, and upon the sale, transfer or other disposition of such Member's ownership interest in a Unit, membership in the Association shall automatically be transferred to the new Unit Owner succeeding to such ownership interest.

Section 3. Regular Meetings. The first regular annual meeting of Members (the "First Meeting"), subject to the terms hereof, shall be held on any day, at the option of the Board; provided that the First Meeting shall be held no later than the earlier of the following events: (a) four (4) months after all the Units within the Property have been sold by the Developer, or (b) three (3) years following conveyance of the first Unit within the Property by the Developer.

Subsequent to the First Meeting, there shall be a regular annual meeting of Members as close as practicable to the anniversary of the First Meeting. All such meetings of Members shall be held at such place in Davidson County, Tennessee, and at such time as specified in the written notice of such meeting which shall be sent to all Members at least ten (10) days prior to the date of such meeting.

Section 4. Special Meetings. Special meetings of all Members may be called by the President or by a majority of the Members of the Board. Said special meetings shall be called by sending written notice to all Members not less than ten (10) days prior to the date of said meeting, stating the date, time and place of said special meeting and the matters to be considered.

Section 5. Delivery of Notice of Meetings. Any notice to the Members required to be sent or given by the Declaration or Bylaws shall be deemed to have been sent if such notice is in writing and is delivered to each Member by hand delivery, overnight courier, facsimile transmission, e-mail, or other form of wire or wireless communication or is sent by U.S. Mail, postage prepaid, to the Member's Unit or to such other address provided in writing from time to time by such Member to the Association.

Section 6. Waiver of Notice. A Unit Owner's attendance at a meeting waives objection to lack of notice or defective notice of the meeting unless the Unit Owner at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting.

Section 7. Quorum. The presence of at least fifty one percent (51%) of the votes entitled to be cast at a meeting of the Members shall constitute a quorum at all meetings of the Members for the transaction of business. If, however, the number of Members entitled to vote at a meeting fails to satisfy a quorum, the Members present shall have the power to adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented.

Section 8. Voting Membership.

(a) Class A. Class A Members shall be all Unit Owners and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be members. The Vote for such Unit shall be exercised as they determine advise the Secretary of the Association, but in no event shall more than one (1) vote be cast with respect to any Unit. In the absence of such advice, the Unit's vote shall be suspended in the event more than one person seeks to exercise it. In the absence of written instruction to the contrary, with respect to any Unit held jointly by two individuals, either person may exercise the voting right for that Unit.

(b) Class B. The Class B Member shall be the Developer and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease upon the sale of both Units to owner occupants.

(c) Notwithstanding the foregoing, no Unit Owner who is in default in the payment of assessments hereunder shall be entitled to exercise the right to vote until such Unit Owner has cured such default. A Unit Owner shall be deemed to be in default if such Unit Owner has not paid their assessments to the Board, or the Board's agent, within ten (10) days after the date such assessments are due. A Unit Owner may protest the amount of the assessment, but the assessment must be paid during the pendency of the protest to the Board.

(d) Except as otherwise provided in these Bylaws, the Declaration or the Act, action on any matter voted upon at a meeting of the Unit Owners is approved if a majority of the Unit Owners vote in favor of the action.

Section 9. Action by Written Consent. Action that is required or permitted to be taken at a meeting of the Unit Owners may be taken without such a meeting if all Unit Owners entitled to vote on the action consent to taking such action without a meeting. If all of such Unit Owners so consent, the affirmative vote of the number of votes that would be necessary to authorize or take such action at a meeting shall be the act of the Unit Owners, except as otherwise provided in these Bylaws. Such consents shall be permitted to be made in counterparts and shall describe the action taken, be in writing, be signed by each Unit Owner entitled to vote on the action, indicate each signing Unit Owner's vote or abstention on the action, and be delivered to the Secretary of the Association and included in the minutes or Association records.

## ARTICLE III.

## BOARD OF DIRECTORS

Section 1. Number, Election and Term of Office. The Association shall be governed by a Board of Directors (the "Board") composed of two (2) individuals (the "Directors" and each a "Director") appointed or elected as provided in these Bylaws. Prior to the First Meeting, the Developer shall appoint the interim Board of Directors (the "Interim Board") until the first meeting of the Members. The Interim Board shall have and shall exercise all powers and obligations given to the Board by these Bylaws. At the First Meeting and at each annual meeting thereafter, Directors shall be appointed or elected as follows:

(a) Each Unit Owner shall have the right to appoint one (1) Director to serve a one year term on the Board. Directors appointed by the Unit Owners are required to be Members. Voting by proxy is allowed.

(b) Any Director so appointed or elected may be appointed or elected to subsequent terms as a Director without limitation.

Section 2. Qualification. Except for members of the Interim Board and any Directors appointed by Developer, each Director shall be a Member. If a Director shall cease to be a Member during that Director's term, he or she shall thereupon cease to be a Director and such place on the Board shall be deemed vacant, except that in the event a Unit Owner Director

transfers title to a Unit, then the successor Unit Owner shall immediately assume the transferor's position as Director and no vacancy shall occur.

Section 3. Vacancies. Any vacancy occurring in the Board shall be filled by majority vote of the remaining Directors. Any Director so elected to fill a vacancy shall hold office for the remainder of the unexpired term.

Section 4. Meetings. A regular annual meeting of the Board shall be held not less than ten (10) days following the regular annual meeting of Members. Special meetings of the Board shall be held upon a call by the President or by a majority of the Board on not less than forty-eight (48) hours' notice in writing to each Director, delivered to each Member by hand delivery, overnight courier, facsimile transmission, e-mail, or other form of wire or wireless communication or is sent by U.S. Mail, postage prepaid, to the Member's Unit. 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. A Director's attendance at a meeting shall constitute his or her waiver of notice of said meeting.

Section 5. Removal. Any Director may be removed from office with or without cause by a majority vote of Members of the Association.

Section 6. Compensation. Directors shall receive no compensation for their services as Directors.

Section 7. Quorum. A majority of the Directors shall constitute a quorum.

Section 8. Powers and Duties. The Board shall have the following powers and duties:

(a) to elect and remove the Officers of the Association as hereinafter provided;

(b) to administer the affairs of the Association, the Property, and the Common Elements, including the purchasing of casualty and liability insurance authorized by the Declaration and Bylaws, if the Board shall determine that such insurance is reasonable and necessary to purchase;

(c) to formulate policies for the administration, management and operation of the Property and the Common Elements;

(d) to adopt rules and regulations, with written notice thereof to all Owners, governing the administration, management, operating and use of the Property and the Common Elements;

(e) to provide for the maintenance, repair, and replacement of the Common Elements and other expenses authorized by the Declaration and Bylaws and payments therefore, to approve payment vouchers or to delegate such approval to the Officers;

(f) to engage the service of an agent (herein sometimes referred to as the "Managing Agent") to maintain, repair, replace, administer and operate the Property, or any part thereof, to the extent deemed advisable by the Board. The Board shall require that such Managing Agent have fidelity bond coverage on its employees handling Association funds. The cost of such services shall be a Common Expense;

(g) to provide for the designation, hiring and removal of employees and other personnel, 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 other expenses authorized by the Declaration and Bylaws;

(h) to appoint committees of the Board and to delegate to such committees the Board's authority to carry out certain duties of the Board;

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

(j) to estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Members their respective shares of such estimated expenses, as hereinafter provided;

(k) to exercise any other powers and duties ascribed to the Board in the Declaration and Bylaws; and

(l) unless otherwise provided in the Declaration, to comply with the instructions of a majority of the Members, as expressed in a resolution duly adopted at any annual or special meeting of the Members.

Section 10. Non-Delegation. Nothing in this Article or elsewhere in these Bylaws shall be considered to grant to the Board, the Association or to the Officers of the Association any powers or duties which, by law, have been delegated to the Members.

## ARTICLE IV.

## OFFICERS

Section 1. Designation. At each regular annual meeting, the Directors present at said meeting shall elect the following officers of the Association ("Officers") by a majority vote:

(a) a President, who shall be a Director and who shall preside over the meetings of the Board and of the Members, and who shall be the chief executive office of the Association;

(b) a Secretary/Treasurer, who shall keep the minutes of all meetings of the Board and of the Members, be responsible for financial records and books of account and the

Manner in which such records and books are kept and reported, and who shall, in general, perform all the duties incident to the offices of Secretary and/or Treasurer; and

(c) such additional Officers as the Board shall see fit to elect.

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 the successor shall have been appointed or elected and qualified.

Section 4. Removal. Any Officer may be removed from office for cause by majority vote of the Directors.

Section 5. Vacancies. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of said Board. Any officer so elected to fill a vacancy shall hold office for the remaining unexpired term.

Section 6. Compensation. The Officers shall receive no compensation for their services as Officers.

## ARTICLE V.

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

In addition to the powers delegated to the Association by its Charter, the Association shall have the obligation to perform each of the following duties related to the Property and Common Elements:

Section 1. Operation and Maintenance of Common Elements. To operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of the Common Elements, together with all easements for operation and maintenance purposes and for the benefit of the Association or its Members over and within the Common Elements, and/or the Units; to keep all Improvements, if any, of whatever purpose from time to time located on the Common Elements in good order, condition, and repair. Said maintenance shall include, but not be limited to, the maintenance obligations set forth in Article VI, Section 1 below.

Section 2. Taxes and Assessments. To pay all real and personal property taxes and assessments separately levied upon or assessed against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association.

Section 3. Insurance. To obtain from reputable insurance companies qualified to do business in the State of Tennessee and maintain in force at all times such insurance as is required by the Declaration and Bylaws.

Section 4. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within Davidson County conveyed to it by the Developer as permitted herein.

Section 5. Rules and Regulations. The Association, through its Board of Directors or otherwise, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by the Declaration. Sanctions may include reasonable monetary fines, suspension of the right to vote and suspension of the right to use the Common Elements. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. In addition, the Association, through the Board or otherwise, may, be contract or other agreement, enforce county ordinances or permit Metropolitan Nashville and Davidson County to enforce ordinances on the Property for the benefit of the Association and its Members.

Section 6. Implied Rights. The Association may exercise any other right or privilege given to it expressly by these Bylaws or the Declaration, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonable necessary to effectuate any such right or privilege.

## ARTICLE VI.

## ASSESSMENTS

Section 1. Annual Budget. The Board shall cause to be prepared, at least 60 days before the beginning of the fiscal year and 30 days prior to the meeting at which the budget shall be presented to the Members, a budget, including both an Operating Budget and a Capital Budget.

Section 2. Partial Year of Month. For the first fiscal year and thereafter until the First Board is elected, the annual budget shall be approved by the Interim Board (as defined below). If such first fiscal year, or any succeeding fiscal year, shall be less than a full year, then the monthly or quarterly or annual assessments for each Member shall be proportionate to the number of months and days in such period covered by such budget.

Section 3. 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 Member a statement for such year so ended, showing the receipts and expenditures and such other information as the Board may deem desirable.

Section 4. Supplemental Budget. In the event that during the course of any year, it shall appear to the Board that the Assessments, determined in accordance with the Budget for such year, are insufficient or inadequate to cover the estimated expenses for the remainder of such year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Member, and thereupon a supplemental Assessment shall be made to each Member for his proportionate share of such supplemental budget.

Section 5. Records and Books of Account. The Association shall keep a current copy of the Declaration, Bylaws, Charter, and any duly adopted Rule and Regulation as well as detailed books of account showing all expenditures and receipts including but not limited to, Assessments, in chronological order, of the administration of the Property which shall specify the expenses of maintenance and repair of the Common Elements, and any other expenses incurred by or on behalf of the Association and the Owners. Such records, books and the vouchers accrediting the entries shall be open for inspection by the Owners and any Mortgagee of any Unit during reasonable working hours on weekdays.

Section 6. Common Expenses. All expenses paid and incurred by the Association attributable to Common Elements shall be deemed a "Common Expense".

Section 7. Owner Expenses. All expenses paid and incurred by the Association attributable to an Owner that are not considered Common Expenses shall be deemed an expense of the Owner to whom such expenses are attributable (hereinafter referred to as "Owner Expenses"). Such Owner Expenses shall be assessed to the Owner.

Section 8. Creation of Assessments. There are hereby created annual Assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors as follows (collectively, the "Assessments"):

(a) General Assessments. The Board may levy annual assessments against all Units for expenses determined by the Board to benefit the Association and/or the Units as a whole, including without limitation, Common Expenses and any other expenses incurred by the Association in fulfilling its maintenance obligations set forth above ("General Assessments"). General Assessments shall be allocated equally among all Units. The Board shall fix the amount of General Assessments each year.

(b) Special Assessments. In addition to the General Assessments authorized above, the Board may levy, during any calendar year or fiscal year, but in no event prior to the first annual meeting of the Members, special assessments, applicable only to that year, to be used solely to defray, in whole or in part, the cost of any construction, reconstruction, or unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto "(Special Assessments"). The Board may levy a Special Assessment against all Units for such expenses as a whole. Special Assessments must be approved by vote or written consent of a majority of the Members in the Association.

Section 9. Assessment Obligation

(a) Each owner, by acceptance of his or her Deed, is deemed to covenant and agree to pay all Assessments levied by the Association pursuant to the Declaration and the Bylaws, whether or not such obligation is so expressed in his or her Deed. A budget for the first year of the Association, including contemplated General Assessments and Special Assessments, and a breakdown thereof, shall be established by the Board.

(b ) All Assessments together with interest at the highest rate allowable under the laws of Tennessee from time to time (or if no such rate is established, 12% per annum) ("Interest"), costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each Assessment is made. Each Assessment, together with Interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title.

(d) Assessments shall be paid in such manner and on such dates as may be fixed by the Board. The manner of payment fixed by the Board may include, without limitation, acceleration of the Assessment levied on a particular Unit on account of delinquent payment of such Assessment. Unless the Board otherwise provides, General Assessments shall be paid annually, and all other Assessments shall be paid as set forth in the Bylaws or as stipulated by the Board.

Section 10. Computation of General Assessments. It shall be the duty of the Board, at least 60 days before the beginning of the fiscal year and 30 days prior to the meeting at which the budget shall be presented to the Members, to prepare a budget covering the estimated costs of operating the Association during the coming fiscal year (the "Operating Budget"). The Operating Budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared, that shall take into account the number and nature of replaceable assets comprising the Common Elements, the expected life of each asset, and the expected repair or replacement cost for the coming fiscal year (the "Capital Budget"). The Board shall set General Assessments based on the Operating Budget and the Capital Budget. The Board shall cause a copy of the Operating Budget, and the amount of each General Assessment to be levied against each Unit for the following fiscal year, to be delivered to each Owner at least 10 days prior to each annual meeting. The Operating Budget, together with the Capital Budget and the General Assessments (collectively, the "Budget"), shall become effective unless disapproved at the meeting by a majority vote of the total Association membership.

Notwithstanding the foregoing, however, in the event the Members disapprove the proposed Budget or the Board fails for any reason to determine the Budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the Budget in effect for the then current year shall continue for the succeeding year.

Section 11. Certificate of Payment. The Board shall, upon request and for a reasonable charge not to exceed $25.00, plus the cost of copies, if requested, furnish to any Person a certificate, signed by an officer of the Association, setting forth whether or not all Assessments on a specified Unit have been paid and any other information requested pursuant to Tenn. Code Ann. §§ 66-27-501, et. Seq. Such certificate shall be conclusive evidence of payment of any Assessment and other information therein.

Section 12. No Exemption. No Owner may be exempt from liability for contribution toward the expenses of the Association and the Condominium Project by waiver of the use of enjoyment of any of the Common Elements or by the abandonment or sale of such Owner's Unit.

Section 13. Discharge of Liens. The Board may cause the Association to discharge any mechanic's lien or other encumbrance that 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 or elements associated with such Unit. When fewer than all Unit Owners are responsible for the existence of any such lien, then the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the lien and for all costs and expenses, including attorneys' fees, incurred by reason of such lien.

## ARTICLE VII.

## INSURANCE

Section 1. Mandatory Owner's Insurance. Owners shall comply with the following requirements regarding insurance:

(a) EACH OWNER, AT SUCH OWNER'S OWN EXPENSE, SHALL OBTAIN INSURANCE COVERAGE UPON THEIR PERSONAL PROPERTY, THEIR UNIT AND ANY PRIVATE ELEMENTS OR LIMITED COMMON ELEMENTS ASSOCIATED WITH SUCH UNIT against loss or damage by fire, vandalism, malicious mischief, and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Unit. In addition, each Owner shall be responsible for obtaining insurance providing such Owner with comprehensive personal liability insurance covering liability for damage to person or property of others located within such Owner's Unit or in another Unit or upon the Common Elements resulting from the negligence of the insured Owner. Such insurance shall not be the responsibility of the Association and by acceptance of a deed to a Unit, each Owner acknowledges that such insurance is and shall be the sole responsibility of such Owner. All property and liability insurance carried by an Owner shall provide that such policies may not be cancelled or substantially modified without thirty (30) days' prior written notice thereof to each of the insureds, including all Mortgagees of Units.

(b) Annually, on a date set by the Board, each Owner shall provide the Association and other Owner with proof of insurance coverage insuring such Owner's Unit, Private Elements, and appurtenant Limited Common Elements against loss or damage by fire, vandalism, malicious mischief, and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Unit. If an Owner fails to

provide proof of insurance in accordance with this Section, then the other Owner may, after ten (10) days' notice to such Owner, either purchase such insurance and claim a lien for damages, or seek to enjoin, abate or remedy the breach if the obligation to obtain insurance by appropriate legal proceedings, either at law or in equity, in a court of appropriate jurisdiction.

Section 2. The Association may purchase and carry policies of insurance as the Directors may determine is reasonable and necessary with respect to the Property and the Association's administration thereof. The Association is hereby irrevocably appointed as attorney-in-fact for each Owner and for each holder of a Mortgage or other lien upon a Unit and for each owner of any other interest in the Property for the purpose of purchasing and maintaining insurance as set forth in this Section, including the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purposes.

## ARTICLE VIII.

NO PARTITION

There shall be no physical partition of the Common Elements or any part thereof. This Article shall not construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to the Declaration or the Bylaws.

## ARTICLE IX.

RECONSTRUCTION OR REPAIR

Section 1. Reconstruction. Reconstruction will occur if a Unit or any portion of the Common Elements is damaged by fire or other disaster; unless the Association, by majority vote, decides not to do so.

Section 2. Plan for Reconstruction. Any reconstruction or repair of any Unit or any other Improvement shall be substantially in accordance with the Declaration and the original plans and specifications for the Property unless the Owners shall unanimously decide otherwise.

Section 3. Repair of Units. Each Owner shall be responsible for the reconstruction, repair or replacement of the interior of such Owner's Unit, Private Elements and Limited Common Elements as set forth in the Declarations. Each Owner shall also be responsible for the costs, not otherwise covered by insurance carried by the Association, of any reconstruction, repair or replacement of any portion of the Property necessitated by their negligence or misuse or the negligence of misuse of persons for whose actions such Owner is legally responsible.

Section 4. Repair of the Common Elements. The cost of restoring all damage caused by any casualty to the Common Elements shall be the responsibility of the Association, with any such costs to be allocated consistent with the Declarations and these Bylaws.

## ARTICLE XI.

## INDEMNIFICATION

The Association shall indemnify its officers and directors against any and all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other controversy or 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, or may become involved, by reason of being or having been an officer or director of the Association. The officers and directors 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 and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any office or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**EXHIBIT D**

**ATTORNEY OPINION LETTER REQURIRD BY**

**TENN. CODE ANN. § 66-27-103**

RENO&CAVANAUGH PLLC

April 23, 2014

David L. Kleinfelter
(615) 866-2320
(615) 866-2321 fax
dkleinfelter@renocavanaugh.com

**VIA EMAIL (tim@tsquareengineering.com)**
Timothy E. Turner and Leigh A. Turner
903 Hillmont Court
Nashville, Tennessee 37221

Re: 1120 Cahal Townhomes, a Horizontal Property Regime with Private Elements

Dear Tim and Leigh:

We have reviewed the following documents, which are attached to this letter (the "Documents"):

1. Declaration of Covenants, Conditions and Restrictions for 1120 Cahal Townhomes, a Horizontal Property Regime with Private Elements, dated April ___, 2014, for filing with the Register's Office for Davidson County, Tennessee.

2. Bylaws of 1120 Cahal Townhomes Owners' Association, Inc. attached as Exhibit C to the above Declaration, for filing with the Register's Office for Davidson County, Tennessee.

3. Plat of 1120 Cahal Townhomes, attached as Exhibit B to the above Declaration, for filing with the Register's Office for Davidson County, Tennessee.

4. Charter of 1120 Cahal Townhomes, Inc., a Tennessee not for profit corporation, to be submitted to the Secretary of State of Tennessee immediately following the recording of the Declaration and Bylaws.

Based solely on the review of the Documents, we are of the opinion that upon the recording of the Documents with the Register's Office for Davidson County, Tennessee, then pursuant to Tenn. Code Ann. § 66-27-103(b) a "planned unit development" has been created under said statute. In reaching this conclusion, we have assumed this statutory provision, along with the others pertaining to planned unit developments under §§ 66-27-101, et seq (the "Old Act") were not superseded by the subsequent enactment of the Tennessee Condominium Act of 2008, Tenn. Code Ann. §§ 66-27-201, et seq (the "New Act"), and the New Act superseded the Old Act solely with respect to condominiums (and not planned unit developments).

Sincerely,

David Kleinfelter

Attachments

## EXHIBIT E

## RULES AND REGULATIONS OF 1120 CAHAL TOWNHOMES

In order to assure peaceful and orderly use and enjoyment, and to maintain the privacy, character, and property values of the Units, the initial Rules and Regulations, which shall be binding upon all Unit Owners, except the Developer, shall be as follows:

1. The entrances of the Units shall not be obstructed.

2. Neither Unit Owner shall make or permit any noise or objectionable odor that will disturb or annoy the occupants of the other Unit Owners or do or permit anything to be done therein that will interfere with the rights, comfort or convenience of other Unit Owners.

3. Each Unit Owner shall keep his Unit and Limited Common Elements in a good state of preservation and cleanliness at such owner's expense.

4. No awnings, window guards, ventilators, or air-conditioning devices shall be used in or about the Units except such as shall have been approved the other Unit Owner.

5. No reflective materials of any kind shall be allowed on the windows, nor shall any wall mounted heating and air conditioning units be permitted. No outdoor clothes lines shall be permitted.

6. No sign, notice, lettering or advertisement shall be inscribed or exposed on or at any window, door or other part of the Property, except such as shall have been approved by the other Unit Owner; nor shall anything be projected out of any window of the Buildings without similar approval. Except for "For Sale" & "For Rent" signs that are the customary residential size, no other signs are allowed on the grounds of either Unit without prior consent of the owners of both Units.

7. All garbage, refuse, and ashes from each Unit shall be deposited with care in the private receptacles of each Unit. Roll out garbage receptacles shall be visible on the street only on days during pick up. No burning, burying, or other disposal of garbage shall be permitted.

8. Toilets, sinks, and other water apparatus in the Units shall not be used for any purposes other than those for which they were constructed; nor shall any sweepings, rubbish, rags, paper, ashes, flammable or caustic liquids, or any other material that could reasonably be expected to cause damage be placed in the same. Any damage resulting from misuse of any water apparatus shall be paid for by the Unit Owner causing such damage consistent with each Unit Owner's obligations contained in the Declarations and Bylaws.

9. All balconies, terraces, courtyards, and grounds shall be kept and maintained neatly and cleanly.

10. A Unit Owner shall not own or otherwise keep on the Property more than a maximum of three (3) cats and two (2) dogs, which cats and/or dogs must be kept inside an Owner's Unit. No pet shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance. Pets can be kept only for domestic use. In no event shall any other animal be kept or harbored in the units without prior written approval of all both Unit Owners. Both Unit Owners shall obey all applicable leash laws. No pet enclosures shall be allowed outside any Unit.

11. No radio, television aerial or satellite dish shall be attached to the exterior of a Unit without written approval, including the size and location, of the other Unit Owner.

12. Neither Unit Owner shall use or permit to be brought into the Units any flammable oils or fluids such as kerosene, naphtha or benzene, or other explosives or articles deemed extra hazardous to life, limb or property, without in each case obtaining the prior written consent of the other Owner.

13. Interior & Exterior Lighting of each Unit shall be considerate and not interfere with the privacy, livability, and enjoyment of the other Unit.

14. Neither Unit Owner shall channel or direct drainage onto the neighboring Unit or its grounds, other than as designated on any drainage plan approved as part of construction of the Property.

15. Exterior sculpture, fountains, flags (except national flag), and similar items require prior approval of the other Unit Owner.

16. No exterior speakers, horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, will be located, used, or placed within the Property.

17. There shall be no outside storage, including use of any temporary storage unit (e.g. Pods), and no temporary structure, mobile home, trailer (either with or without wheels), motor home, tent, tractor, truck (other than pickup trucks), commercial vehicles of any type, camper, boat or other water transportation devices, except in a Unit's garage, if applicable. No Owners or other Occupants shall be permitted to repair or restore any vehicle of any kind upon or within the Property, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

18. Remedies. In the event of any violation of the provisions of the Rules and Regulations by either Unit Owner (either by his own conduct or by the conduct of any occupant of his Unit), the Owner of the other Unit, shall have each and all of the rights and remedies that may be provided for in the Act, the Declaration, these Bylaws and/or the Rules and Regulations, or that may be available at law or in equity.