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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICITONS FOR

THE FLATS AT HIGHLAND HEIGHTS

A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made and entered into as of the 29th day of January, 2015 by D223, LLC, a Tennessee limited liability company, hereinafter referred to, together with its successors and assigns, as the "Developer".

WITNESSETH:

WHEREAS, the Developer is the legal title holder in fee simple of a certain tract of real estate located in County of Davidson, State of Tennessee, more particularly described on **Exhibit A** (the "Real Property"); and

WHEREAS, the Developer intends to does herby submit the above-described Real Property to the provisions of the Tennessee Horizontal Property Act as codified as 66-27-101, et seq., of the Tennessee Code Annotated and thereby cause a planned unit development to be organized and developed under Tennessee law pursuant to said Horizontal Property Act; and

WHEREAS, the Developer further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Real Property or any part thereof or improvements thereon, and intends that all future owners, occupants, mortgagees and any other person hereafter acquiring any interest in the Real Property shall hold said interest subject to, certain rights, easements, and privileges in, over and upon the Real Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof, all as more particularly hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspects of ownership and use of the Real Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Real Property.

NOW, THEREFORE, the Developer, as the legal titleholder of the Real Property, and for the purposes above set forth, declares as follows:

1. **Definitions.** In addition to the terms defined elsewhere in this Declaration, the following terms when used herein shall have the meanings ascribed to them in this section, unless the context otherwise requires. All capitalized terms not otherwise defined herein but defined in the Act, shall be deemed to have the meaning ascribed to them in the Act, to the extent such terms are defined therein:

   a) "Act" means Tennessee Code Annotated, Sections 66-27-101, *et seq.*, known as the "Horizontal Property Act" of the State of Tennessee, as the same may be amended from time to time.

   b) "Association" means the non-profit Tennessee corporation known as THE FLATS AT HIGHLAND HEIGHTS HOA, Inc., which includes as members all of the Unit Owners. Association shall also include any Association(s) created under any Supplemental Declaration.

   c) "Board of Directors" or "Board" means the administering body of the Association.

   d) "Buildings" means the buildings located on the parcel and forming a part of the Property and containing the Units. The buildings are delineated on the Plat.

   e) "By-Laws" mean the By-Laws of the association attached hereto as **Exhibit C**, as amended from time to time. For purpose of the Act, all provisions contained in the body of this Declaration dealing with the administration and maintenance of the property shall be deemed to be part of the By-Laws. Bylaws shall also include any Bylaws created under any Supplemental Declaration.

   f) "Common Elements" means all real property and improvements owned by the Association for the common use and enjoyment of the Owners. Ownership of the Common Elements shall remain

undivided and shall not be the subject of an action for partition. The Common Elements shall be all of the Property except the Private Elements and any Limited Common Elements.

g) "Declaration" means this Declaration, as hereinafter provided as such Declaration may be amended from time to time.

h) "Developer" means D223, LLC, its successors, heirs and assigns, provided such successors, heirs or assigns are designated in writing by Developer as a successor or assignee of the rights of Developer set forth herein.

i) "Developer Control Period" means commencing on the date set forth above, and expiring on the date which is the earlier of (i) one hundred twenty (120) days after the date by which seventy-five (75%) of the Units have been conveyed to Owners other than the initial Developer or successor Developer, or (ii) five (5) years after the first conveyance of a Unit to a purchaser other than the initial Developer or a successor Developer.

j) "General Common Elements" means and includes Common Elements.

k) "Initial Sales Period" means the period commencing on the date set forth above and expiring on the date that Developer no longer owns any of the Units and each Unit sold by Developer is occupied by the purchasers or an Occupant.

l) "Limited Common Elements" means all Common Elements contiguous to and serving exclusively a single Unit or one or more adjoining Units as an inseparable appurtenance thereto, the enjoyment, benefit and/or use of which is reserved to the lawful Occupants of such Unit or Units either in this Declaration, on the Plat or by the board.

m) "Majority" or "Majority of the Unit Owners" means the owners of more than fifty (50%) percent of the membership in the Association, present and then eligible to vote.

n) "Manager" means the person or firm designated by the Board of Directors to manage the affairs of the Project.

o) "Member" means a member of the Association who is the owner of a Unit. All Owners of an individual Unit shall be members and shall collectively be one member for any voting purposes. The cessation of the ownership of a Unit shall terminate membership.

p) "Occupant" means a person or persons lawfully permitted to occupy all or a portion of any Unit, regardless of whether said person is a Unit Owner.

q) "Owner" or "Unit Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, owning a fee simple title to any Unit or Units within the Project. When two or more persons own a Unit as tenants in common, joint tenants, tenants, tenants by the entireties, or otherwise, such persons shall constitute the "Owner" with respect to that Unit.

r) "Ownership Percentage" means the ownership percentages set forth on **Exhibit D**, as the same may be amended as set forth herein.

s) "Parcel" means the parcel(s) or tract(s) of real estate described on **Exhibit A** attached to this Declaration and submitted hereby to the provisions of the Act.

t) "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

u) "Plat" means the representation of the Property prepared by the Developer and attached here to as **Exhibit B**, showing the number of each Unit, and expressing its location and other data necessary for identification of each Unit and its respective Private Elements.

v) "Private Elements" means and includes the land upon which a Unit is located as shown on the Plat as being the Private Elements designated for each Unit depicted thereon for which fee simple ownership and exclusive use is reserved to that Unit only. Notwithstanding the limits of the Private Elements depicted on the Plat, Private Elements do not include the Common Elements; provided that each Owner shall be entitled to the exclusive use of all areas of the building that are contained within each Unit.

w) "Project" means the entire Real Property including all structures and other improvements thereon.

x) "Property" means all of the Real Property, and all structures and other improvements now or hereafter erected, constructed or contained therein or thereon including without limitation the buildings and all easements, rights, privileges and appurtenances belonging or in any way pertaining thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners.

y) "Record" or "Recording" refers to the record or recording in the Office of the Register of Deeds in Davidson County, Tennessee.

z) "Unit" means the part of the Project intended for individual ownership and use. Each Unit shall consist of all the improvements and space therein within the boundary lines for that Unit, as set out on the Plat.

aa) "Rules and Regulations" refer to the rules and regulations concerning the use of the Units and the Common Elements, as adopted from time to time by the Board in accordance with this Declaration and the By-Laws.

bb) "Supplemental Declaration" refers to any instrument that may be recorded by the Developer and/or Associations and/or the Owners of the Property, as the case may be in accordance with the terms of this Declaration, to make additional and/or portions of the Property subject to any such Supplemental Declaration.

2. **Submission of Property to the Act.** Developer does hereby submit and subject the Parcel and the Property to the provisions of the Act. To the extent of any contradiction between a provision of this Declaration and a provision of the Act, the Act shall control.

3. **Plat.** The Plat, which is incorporated herein by this reference thereto, sets forth the numbers or letters, areas, locations and other date required by the Act.

4. **Units.** The legal description of each Unit shall consist of the indentifying 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 or in any other manner cause his Unit to be separated into tracts or parcels different from the whole Unit as shown on the Plat without the approval of the Board of Directors. If approved by the Board after the application of the Owner of the Unit to be subdivided and any affected mortgagee, the Association shall prepare, execute and record an amendment to the Declaration at the expense of the Owner of the subdivided Unit.

5. **Association of Unit Owners and Administration and Operation of the Property.**

a) The Association. The Association, which has been or will be incorporated, shall be the governing body for all Unit Owners, for the maintenance, repair, replacement, administration, and operation of the property, as provided in the Act, this Declaration and the By-Laws. The By-Laws for the Association shall be the By-Laws attached to this Declaration as Exhibit C. The Board shall be elected and shall serve in accordance with the provisions of the By-Laws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time, as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners, in accordance with the provisions of this Declaration and By-Laws. Each Unit Owner shall be a member of the Association so long as he is a Unit Owner. A Unit Owner's membership shall automatically terminate when he 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 simultaneously succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be in accordance with the Ownership Percentage in the Association as set forth in **Exhibit D**.

(b) Management of the Property. The Board shall have the authority to engage the services of a Manager to maintain, repair, replace, administer and operate the property, or any part thereof, to the extent deemed advisable by the Board, subject to the provisions of subparagraph (d), below. The Board nay require that Manager have fidelity bond coverage on its employees handling

Association Funds. The cost of said services shall be a common expense, as defined in paragraph 10, below.

(c) Initial Management Contract. Prior to the appointment of the First Board as provided herein, the Developer, on behalf of the Association, may employ a management company, to act as Manager for the Property; provided, however, that such agreement shall be for a term to end no more than three (3) years after the end of the Developer Control Period and shall be terminable by the Board without penalty on not less than ninety (90) days' notice. The Manager engaged by the Developer pursuant to the terms of this Subsection 5(d) may be with an affiliate of the Developer, so long as the fees charged by such Manager do not exceed market rates charged by property managers of similar properties in the Nashville, Tennessee area.

(d) Use by the Developer. During Initial Sale Period, Developer and Developer's agents, employees, contractors, and subcontractors, and their respective agents and employees, shall be entitled to access the Project and granted ingress to and egress from the Property as may be required for purposes of sale of the Units. In addition, during the Initial Sales Period, the Developer and its employees may rent, lease, use and show one or more of such unsold or unoccupied Units as a model Unit or Units and may rent, lease or use one or more of such unsold and unoccupied Units as a sales office, and may maintain customary signs in connection therewith.

(e) Non-Liability of the Directors, Board, Officers and Developer. Neither the Board, the individual members thereof, the officers of the Association, nor Developer shall be personally liable to Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever of such Board, members, officers or Developer, except for any acts or omissions found by a court to constitute gross negligence or fraud. Unit Owners shall indemnify and hold harmless the Board, its members, officers and Developer, and their respective heirs, executors, administrators, successors and assigns in accordance with the provisions of Article VII of the Bylaws.

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

7. **Ownership of the Common Elements.**

a) Ownership of the Common Elements shall be vested in the Association.
b) Each Unit Owner shall be entitled to the percentage of undivided ownership in the Common Elements in accordance with their respective Ownership Percentage. The Ownership Percentages shall remain constant unless amended pursuant to the reservation set forth herein, or unless hereafter changed by recorded amendment to this Declaration as provided for herein or consented to in writing by the necessary Unit Owners and first mortgagees. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in the Common Elements corresponding to said Unit. The undivided percentage of ownership in the Common Elements corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit. Such Unit Owner's ownership interest in the Common Elements is not and shall not be the subject of any partition action.

8. **Use of the Common Elements.** Each Unit Owner shall have the right to use the Common Elements (except for any Limited Common Elements) in common with all other Unit Owners, as may be required for the purposes of access and ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend not only to each Unit Owner, but also to his agents, guests, visitors, invitees, and licensees. However, each Unit Owner also shall have the right to exclusive use and possession of any Private Elements and Limited Common Elements contiguous to and serving such Unit alone, and all Unit Owners benefitted by Limited Common Elements that are intended for the exclusive use of such Units, if any, shall have the right to use such Limited Common Elements to the exclusion of other Unit Owner not benefitted by such Limited Common Elements. Such rights to use the Common Elements, including Limited Common Elements, shall be subject to and governed by the provisions of the Declaration, Bylaws and the Rules and Regulations. In addition, the Association shall have the authority to lease grant concessions or grant easements with respect to parts of the Common Elements, subject to the provisions of this Declaration and the Bylaws. All income derived by the Association from leases, concessions or other sources shall be held and used for the benefit of the

members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

9. **Storage Areas and Parking Spaces.** Storage and parking areas shall be reserved for priority use by the Unit Owners in proportion to their interest in the Association, or as otherwise prescribed by applicable rules and regulations adopted by the Board.

10. **Common Expenses.**

a) Common Expenses and Enforcement. Each Unit Owner shall pay his proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in accordance with this Declaration and the Bylaws (which expenses are herein sometimes referred to as "common expenses"), including, but not limited to, the maintenance and repair of the Common Elements and any and all replacements and additions thereto. Such proportionate share of the common expenses for each Unit Owner shall be in accordance with his Ownership Percentage; provided, however, that any such expenses with respect to Limited Common Elements shall be borne by the Unit Owners to whose Units such Limited Common Elements are appurtenant, in accordance with such Unit Owners' percentage of ownership interest therein. Payment of common expenses, including any prepayment thereof required by a contract for sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. No Unit Owner shall be exempt from payment of his proportionate share of the common expenses by waiver of the use or enjoyment of the Common or Limited Common Elements or by abandonment of his Unit. If any Unit Owner shall fail or refuse to make any such payment of common expenses when due, the amount thereof, together with the interest thereon at the maximum allowable rate to law per annum from the date that said common expenses become due and payable, plus reasonable attorney's fee incurred by the Association in the collection thereof or the enforcement of the lien herein provided, shall constitute a lien on the interest of such Unit Owner in his Unit and in the Property as provided in the Act. The sale or conveyance of a Unit shall in all cases be subject to all unpaid assessments against the Unit Owner thereof for his pro rata share in the common expenses, and if the same are not paid by the owner thereof prior to any sale or conveyance, shall be a lien against the Unit and shall be payable by the New Unit Owner thereof. Likewise, all taxes and other levies and assessments by governmental taxing bodies shall be a lien against individual Units.

b) Any Common Expenses that are incurred through or occasioned by the use or enjoyment of any Limited Common Elements that benefit or are intended to benefit less than all of the Units, shall not be assessed against all of the Units Pursuant to Section 10(a), but shall be specifically assessed equitably among those Units that are so benefited or intended to be benefited. Additionally, to the extent that any Limited Common Elements or other services provided to the Property are utilized by a Unit Owner in a manner that exceeds the customary usage of other Owners, the Board of the Association shall have the right to charge appropriate amounts to such Unit Owner as determined by the Board of the Association in its reasonable discretion.

c) If the developer holds one or more unfinished Units for sale in the ordinary course of business, the Developer shall not be assessed for common expenses for such Units prior to the completion of such Unit. Completion of a Unit shall be deemed to occur when the title to such Unit is conveyed by the Developer to a subsequent Unit Owner that is not a successor Developer or when a final Use and Occupancy permit for such Unit is issued by the Metropolitan Nashville Department of Codes Administration, whichever occurs first. If the Developer holds one or more Units for sales in the ordinary course of business after their completion, the Developer shall not be assessed as a Unit Owner for capital improvements or special assessments without written approval from the Developer, although the Developer may be assessed for common expenses as a Unit Owner for the Unit(s) it holds after the Unit is completed.

11. **Mortgages and Deeds of Trust.**

a) Each Unit Owner shall have the right, subject to the provisions hereof, to make separate mortgages and deeds of trust for his respective Unit together with his respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to grant, make or create or cause to be granted, made or created, any mortgage, deed of trust or other lien on or affecting the Property or any part thereof, except only to the extent of his own Unit and the respective percentage interest in the Common Elements corresponding thereto.

b) Mortgage and Deed of Trust Protection. The lien assessments payable by a Unit Owner shall be subordinate to the lien of a recorded first Mortgage or Deed of Trust on the interest of such Unit Owner, except for the amount of the proportionate share of common expenses which 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 and except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessment or charges to all Units including the mortgaged Unit. This subparagraph (b) shall not be amended, changed, modified, or rescinded without the prior written consent of all Mortgagees and Beneficiaries of record. A Unit Owner who mortgages his Unit and/or the mortgagee or beneficiary under such Mortgage, shall notify the Board of the name and address of his mortgagee and shall file a conformed copy of the Deed of Trust or Mortgage with the Board. This Paragraph shall not be amended, changed, modified or rescinded without the prior written consent of all holders of record of Mortgage and Deed of Trust liens against the Units.

12. **Separate Real Estate Taxes.** Real estate taxes shall be separately taxed to each Unit Owner for his Unit and his corresponding Ownership Percentage in the Common Elements, 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 taxed on the property as a whole, then each Unit Owner shall pay His proportionate share thereof in accordance with his respective Ownership Percentage, and, in said event, such taxes shall be a common expense.

13. **Insurance, Damage and Reconstruction.** Each Unit Owner or Occupant shall be responsible for obtaining his own insurance covering his own Unit building and all alterations, additions, improvements and betterments thereto, in addition to all contents, decorations, furnishing and personal property, therein and any personal property stored elsewhere on the Property. Each Unit Owner or Occupant shall also obtain a liability policy covering damage or injury occurring in his own Unit. The policy of insurance covering such Unit building shall afford, as a minimum protection against loss or damage by fire or other perils normally covered by the "HO-3" or "HO-5" policy, or their then nearest current equivalent, where such is available, and such policy shall be in an amount equal to one hundred percent (100%) of current replacement cost of such individual Unit building and all alterations, additions, improvements or betterments thereto. In addition, in the event a Unit Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that his liability loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Board for the benefit of all of the Unit Owners as part of the common expenses as provided herein, said Unit Owner may at his option and expense, obtain additional insurance.

The Board may obtain insurance for the 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 Property and the Common Elements, and against such other hazards and for such amounts as the Board may deem advisable. Insurable replacement cost shall be deemed to be the cost of restoring the Common Elements to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association, as the trustee for each of the Unit Owners. The policy of property insurance shall list the Unit Owners and their mortgagees as additional insured. The premiums for such insurance shall be a common expense. However, at the option of the Board, and upon written notice to all Unit Owners, premiums for such insurance may be separately billed to each Unit Owner and each Unit Owner shall be responsible for payment of the product obtained by multiplying such premium by such Unit Owner's Ownership Percentage.

The Board shall not be responsible for, and the policy of insurance maintained by the Board shall not include coverage for any individual Unit building, the personal property of the Unit Owner or Occupant nor such Owner or Occupants' improvements or betterments nor any other personal property located anywhere on the Property owned by a Unit Owner or Occupant unless the Board specifically approves such responsibility, in writing, and thus specifically includes such property, improvements or betterments in its policy of insurance. The Board in its sole discretion shall determine if such coverage is to be extended.

In the event of damage to or destruction of any of the Property as a result of fire or other casualty covered by insurance maintained by the Board pursuant hereto, the Board shall, in its sole and absolute discretion , determine whether repair, replacement or restoration shall done to the damaged

or destroyed property, without intervention of any Unit Owner. If the Board determines that such repair, replacement or restoration is to be made, then the Board shall arrange for the prompt repair, replacement or restoration of the damaged property in accordance with the original plans and specifications therefore, with such changes as may be required by applicable laws or as the Board may approve. Where the insurance proceeds are insufficient to cover the cost of such repairs, replacement or restoration, the deficit shall be paid by all Unit Owners in proportion to each such Unit Owner's Ownership Percentage.

Notwithstanding the foregoing, reconstruction and repair shall not be compulsory where the whole or more than two-thirds of all the Units are destroyed or damaged by fire or other casualty. In such case and unless otherwise agreed upon by no less than sixty-seven percent (67%) of all Unit Owners, the insurance proceeds shall be delivered to the Unit Owners or their mortgagees, as their interests may appear, in the proportion to the Ownership Percentage of each Unit Owner in the Common Elements; and the Board, as soon as is reasonably practicable and as agent for the Unit Owners, shall sell the Property, in its then condition, free from the effect of this Declaration, which shall terminate upon such sale, on terms satisfactory to the Board, and the net proceeds of such sale and all insurance policies shall thereupon be distributed to the Unit Owners or their mortgagees, as their interests may appear, in proportion to the Ownership Percentage of each Unit Owner. If the Board fails to consummate a sale pursuant to this paragraph within twenty-four (24) months after the destruction or damage occurs, then the Manager or the Board shall, or if it does not, any Unit Owner or mortgagee may, record a sworn declaration setting forth such decision and reciting that under the provisions of this Declaration the prohibition against judicial partition provided for in this Declaration has terminated and that judicial partition of the Property may be obtained pursuant to the laws of the State of Tennessee. Upon final judgment of a court of competent jurisdiction decreeing such partition, this Declaration shall terminate.

The Board may also maintain comprehensive public liability insurance, in such amounts as it deems desirable and worker's compensation insurance and other liability insurance as it deems desirable or as required by law, insuring each Unit Owner, mortgagee(s) of Record, if any, the Association, its officers, directors, Board and employees, Developer and any Manager, from (i) liability in connection with the Property, and (ii) liability arising out of legal proceedings relating to employment contracts to which the Association is a party (to the extent such insurance is reasonably available). The premiums for such insurance shall be Common Expenses; however, at the option of the Board, and upon written notice to all Unit Owners, premiums for such insurance shall be separately billed to each Unit Owner each Unit Owner shall be responsible for payment to the product obtained by multiplying such premium by such Unit Owner's Ownership Percentage. The Board shall retain in safekeeping any such public liability policy for six (6) years after the expiration date of the policy.

The Board may also obtain Fidelity Coverage covering officers, directors and employees who handle or are responsible for handling Association funds. Such bonds shall be in such amounts as the Board may determine, but in no event less than one hundred fifty percent (150%) of the monthly operating expenses of the Association, and shall contain waivers of any defense based upon the exclusion of persons serving without compensation.

The Board, in its sole discretion, also shall have authority to and may obtain such other insurance and bonds as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Property and each member of the Board and officer of the Association, and each member of any committee appointed pursuant to the Bylaws of the Association, from liability arising from the fact that said person is or was director or officer of the Association, or a member of any such committee. The premiums for such insurance and bonds shall be a common expense.

In the event a Unit Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that his liability loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Board for the benefit of all of the Unit Owners as part of the common expenses, as above provided, said Unit Owner may at his option and expense, obtain additional insurance.

14. **Landscaping, Maintenance, Repairs, Replacements and Easements.** Each Unit Owner, at his own expense, shall be responsible for the maintenance, repairs and replacements of his own Unit, Private Elements and any Limited Common Elements serving his Unit or the Board may cause the same to be done at the expense of the Unit Owner, including, but not limited to roof, roofing structure, windows, doors, patios, porches, decks, gutters, heating or air-conditioning units, window boxes, walls (interior and exterior) and any other portions of the Unit that are not covered under any policy of insurance maintained by the Board pursuant to paragraph 13 above. Maintenance, repairs and replacement of the Common Elements, including, but not limited to drives and driveways up to the Unit, sidewalks, exterior parking areas, yard, irrigation, rain garden, storm water, landscaping,

common utility lines, common pipes, common ducts, common wires, common cables, fences and installations for the common use of the Units shall be part of the common expense and shall be furnished by the Association, and/or any applicable Supplemental Association, subject to the provisions of this Declaration, the Bylaws, and/or any Supplemental Declaration or Supplemental Bylaws thereof, and the Rules and Regulations.

If, due to the act or neglect of a Unit Owner, or of his agent, invitee or licensee, damage shall be caused to the Common Elements, Private Elements or to a Unit or Units owned by others, or maintenance, repair or replacement are required that 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, to the extent not covered by the Association's insurance or sufficient proceeds are not collected from the insurance carrier.

A joint and mutual easement hereby exists for any installation, maintenance, repair and replacement of any and all pipes, wires, conduits, or other utility lines running through or around any Unit's Private Elements or Common Elements, if applicable. An easement exists for ingress and egress and maintenance in favor of any public utility providing utility services to the apartments and the Units and to each Unit Owner if necessary to maintain their unit by accessing the other Unit's Private Elements. Reasonable notice to access the adjoining Unit's Private Elements shall be given to the affected Unit Owner unless access is required due to emergency circumstances.

The authorized representatives of the Association, Board or of the Manager with approval of the Board shall be entitled to reasonable access to the individual Units, Limited Common Elements and Private Elements as may be required in connection with the preservation of any individual Unit or Limited Common Elements or Private Elements in the event of an emergency, or in connection with any maintenance, repairs or replacements within the Common Elements, Limited Common Elements, Private Elements or any equipment, facilities or fixtures affecting or serving other Units, Private Elements, Common Elements and Limited Common Elements, or to make any alteration required by any governmental authority.

15. **Alterations, Additions or Improvements.** The Common Elements, or any additions or improvements thereto, shall not be altered or changed by any Unit Owner, without the prior written consent of the Board. The Board may authorize and charge as common expense alterations, additions, and improvements of the Common Elements as provided in the By-Laws. Any Unit Owner may non-structural alterations, additions or improvements within the Unit without the prior written approval of the Board, but such Unit Owner shall be responsible for any damages to other Units, the Common Elements, the Property, or any part thereof, resulting from such alterations, additions and improvements; provided that such alterations, additions or improvements (i) are done in accordance with all applicable laws, codes or ordinances, (ii) do not adversely affect the structural integrity of the Unit or the mechanical, electrical, or plumbing systems firming a part of the Common Elements, and (iii) do not unreasonably disturb the other Occupants of the Project.

16. **Decorating, Cleaning.** Each Unit Owner, at his own expense, shall furnish and be responsible for all decorations and cleaning within his own Unit and the Limited Common Elements serving his Unit, as may be required from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting, and other furnishings and decorations. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceiling of his Unit, and such Unit Owner shall maintain said interior surfaces in good condition at his sole expense, as may be required from time to time. Said maintenance and use of interior surfaces shall be subject to the rules and regulations of the Association, but each Unit Owner shall have the right to decorate such interior surfaces from time to time as he may see fit and at his sole expense. All gutters, windows and screens of a Unit shall be cleaned and washed at the expense of the Unit Owner of that Unit.

17. **Encroachments.** If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements, or if any Unit shall actually encroach upon another Unit, as the Common Elements and Units are shown by 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.

18. **Use and Occupancy Restrictions.**

    a) Use and Occupancy Restrictions. No part of the Units or the Common Elements may be used for purposes other than residential use except as described herein. Leasing or renting of any Unit shall only be permitted pursuant to such terms as reasonably determined by the Board.

b) Business Use. Any business activity in commercial units must conform to all applicable laws, and such activity must be consistent with the character of the Project and shall not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residence of the Project, as may be determined in the sole discretion of the Board. Notwithstanding the foregoing, no part of the Property may be used for purposes other than as allowed by municipal zoning laws.

c) Improper Activities. No Owner or Occupant shall permit anything to be done or kept in or around his Unit which would be in violation of any law, rule or ordinance, would constitute a nuisance, or a hazardous or offensive use or threaten the security or safety of other resident of the Project.

d) Signs. No sign of any kind shall be displayed to the public view from any Unit, Common Element or elsewhere in the Project without approval of the Board, except: (a) such signs as may be used by Developer in connection with the development or sale of Units; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) such signs as may be required for property identification, traffic control and regulation of streets of the Project; or (d) one standard sized real estate/realtor "for sale" or "for lease" sign per Unit.

e) Antennae. No exterior radio, television, microwave, or other antennae or antennae dish or signal capture of distribution device shall be permitted outside any Unit except as expressly permitted by the Board. The Developer or the Board may establish one or more exterior audio, television, microwave or other antennae or antennae dish or signal capture and distribution device as a Common Element for the Project or Limited Common Element for certain Units.

f) Pets. The Board may adopt specific Rules and Regulations concerning pets located on the Property.

g) Rules and Regulations. The Association may adopt additional specific Rules and Regulations in addition to the restrictions set forth herein.

19. **Remedies.** In the event of any violation of the provisions of the Act, this Declaration, the By-Laws, or Rules and Regulations by any Unit Owner (either by his own conduct or by the conduct of any Occupant of his Unit or any invitee or licensee thereof), then the Association, acting through the Board, shall have each and all of the rights and remedies that may be provided for in the Act, this Declaration, the By-Laws or the Rules and Regulations, or that may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting Unit Owner and/or other Occupant 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 for any combination of remedies, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. All expenses of The Board in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest, thereon at the maximum allowed rate by law per annum until paid, shall be charged to assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the common expenses and the Association shall have a lien for all of the same, as well as for non-payment of his respective share of the common expenses, upon (i) the Unit and ownership interests in the Common Elements of such defaulting Unit Owner (ii) all of his additions and improvements thereto, and (iii) all of his personal property in his Unit or located elsewhere on the Property; provided, however, that such lien shall be subordinate to the lien of a recorded first mortgage or deed of trust on the Unit, to the extent hereinabove set forth in paragraph 11(b). In the event of any such default by any Unit Owner, the Board and the Manager, if so authorized by the Board, 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 and secured by the lien hereinabove provided. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

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 Association, acting through the Board, the right, in addition to any other rights provided for in this Declaration: (a) to enter (either peaceably or forcibly without liability to such Unit Owner for such entry) upon the Unit, or any portion of the

Property upon which or as to which such violation or breach exists, and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach: or (c) to take possession (either peaceably or forcibly without liability to such Unit Owner for such entry) of such Unit Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law.

If any Unit Owner (either by his own conduct or the conduct of any other Occupant of his Unit or any invitee or licensee thereof) shall violate the Act, or any of the covenants, restrictions or provisions of this Declaration, the By-Laws, or any of the Rules and Regulations, including, without limitation, the failure to pay sums due from the Unit Owner under this Declaration, and if such default or violation shall continue for ten (10) days after notice to the Unit Owner in writing from the Board, or shall occur repeatedly during any ten (10) day period after such written notice or request to cure such violation from the Board, then the Board shall have the power to issue to said defaulting Unit Owner a notice in writing terminating the rights of the said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use or control his Unit, and thereupon an action in equity may be filed by the Association, acting through the Board, against said defaulting Unit Owner for a decree mandatory injunction against such defaulting Unit Owner or Occupant, or in the alternative, for a decree declaring the termination of said defaulting Unit Owner's right to occupy, use or control the Unit owned by him on account of said violation, and ordering that all right, title and interest of said defaulting Unit Owner in the Property shall be sold (subject to the lien of any existing deed of trust or mortgage) at a judicial sale upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the said defaulting Unit Owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of proceeding and sale, and all such items shall be taxed against said defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments or liens hereunder, shall be paid to said defaulting Unit Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Unit and the Unit Owner's corresponding Ownership Percentage in the Common Elements, and to immediate possession of the Unit sold, and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Unit ownership sold subject to this Declaration.

20. **Amendment.** Subject to the other terms hereof, the provisions of this Declaration may only be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission, approved and signed by not less than sixty-seven percent (67%) of the Unit Owners (each Unit shall be entitled to only one vote) and acknowledge; provided, however, that all lien holders of Record shall 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 shall be made a part of such instrument.

Notwithstanding the foregoing, if the Act, this Declaration or the By-Laws require the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all Unit Owners or all lien holders or both as required by the Act or this Declaration. The change, modification or rescission, shall be effective upon the Recording of such instrument in the Office of the Register of Deeds of Davidson County, Tennessee: provided, however, that no provisions in the Declaration may be changed, modified or rescinded so as 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, FHLMC or other desired approval for the horizontal property regime.

21. **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 provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the Governor of Tennessee holding office as of the date of this Declaration.

22. **Notices.** Notices provided for in Act, this Declaration or the By-Laws shall be in writing, and shall be addressed to the Association, the Board, or any Unit Owner, as the case may be. The Association or Board may designate a different address or addresses for notices by giving written notice of such change of address to all Unit Owners. Any notices provided to a Unit Owner shall be delivered to the

address assigned to the Unit; provided any Unit Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgement 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 Unit Owner or Owners whose Unit is subject to such mortgage or trust deed.

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

24. **Rights and Obligations.** Each grantee of Developer and such Grantee's heirs, successors and assigns, by the acceptance of a deed of conveyance with respect to any part of the Property, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges of, 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 this Declaration. Any restrictions or rules in the By-Laws that are more than administrative in nature such as, but not limited to, reservations in favor of and future rights of 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 any interest or estate in the Property, 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 By-Laws, appended hereto and recorded herewith, pursuant to Tennessee Code Annotated, Section 66-27-111, as they may be amended from time to time. The acceptance of a deed of conveyance, devise of or lease to a Unit, or the entering into occupancy of any Unit, shall constitute an agreement that the provisions of the By-Laws, 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 the Declaration, By-Laws, and rules and regulations of the Association may be incorporated by reference in, and become part of, the agreement between any first mortgagee and any present or future Unit Owner who enters into such an agreement with a first mortgage. When so incorporated, any default in the terms and conditions of this Declaration, By-Laws, and rules and regulations may be considered by the first mortgagee as a default, whereupon said first 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

25. **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 beneficiary or 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 holding trustee personally for payment of any lien or obligation created hereunder, and such trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien 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 of the beneficial interest of any such trust or any transfer of title to such Unit.

26. **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. If a majority of the Board in its sole and absolute discretion approve the repair and restoration of such Common Elements, the Board shall arrange for the repair and restoration of such Common Elements, the Board shall disburse the proceeds of such award to the contractor(s) engaged in such repair and restoration in appropriate progress payments. In the event the Board does 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 the Ownership Percentage of each Unit Owner.

27. **Developer's Rights Reserved.** The Developer reserves the following rights in the Property:

a) The right to establish, relocate, expand, modify, reduce, enlarge or extend existing driveways, parking areas and yard and to establish, construct, relocate, expand, modify, reduce, enlarge or extend sewers, utility lines or service connections in order to serve any building on the Property; and

b) The right to amend the Plat and this Declaration in order to add, delete or alter the boundaries between Units and thereby alter the Ownership Percentage allocated to such Units; and

c) The right to reassign Common Elements as Limited Common Elements to serve a single Unit or one or more adjoining Units as an inseparable appurtenance thereto; and

d) The right to add any real estate to the Property and to create or additional Units or Common Elements or Limited Common Elements and to create separate and/or additional Supplemental Declarations therefor; and

e) The right to appoint and remove all officers and directors of the Board until the expiration of the Developer Control Period; and

f) The right during the Developer Control Period to amend this Declaration to comply with the requirements of the Act, the Federal National Mortgage Association, the Federal Housing Authority, the Federal Home Loan Mortgage Corporation, the Veteran's Administration or other mortgage lending programs that can afford financing for the purchase of Units.

28. **Association's Rights Reserved.** The Unit Owner's right of enjoyment in the Common Elements shall be subject to:

a) The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights of any member in utilities, ingress and egress, and all other rights in the Common Elements for any period during which an Assessment remains unpaid, and for such period as it considers appropriate for any infraction to the Rules and Regulations; and

b) The right of the Association to charge reasonable fees for the use of designated 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 members entitled to vote thereon, provided that no such diminution or dedication or transfer, nor any determination as to the purposes or as to the conditions thereof, shall be effective unless Developer (or its successors or assigns) and at least sixty seven percent (67%) of the total votes of the Association entitled to vote thereon have approved such dedication, transfer, purpose or condition; providing, however, that such consent shall not be required for the dedication of utility or service easements; and

d) The right of the Association, by a decision of the Board, to grant such licenses, permits, easements and rights-of-way to such utility companies or public agencies or authorities as it shall deem necessary for the proper servicing, maintenance and operation of the Common Elements and the individual Units.

29. **Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Regulations.** Notwithstanding anything to the contrary contained in this Declaration or in the By-Laws of the Association, all terms, conditions, regulations, and requirements which are now existing, or which may be amended from time to time by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, pertaining to Planned Unit Developments, if applicable, are hereby incorporated as terms and conditions of this Declaration and By-Laws and such shall be governing upon the Property, Developer, and the Association, so long as such terms or conditions are not inconsistent with the laws of the State of Tennessee as found in T.C.A., Section 66-27-101. *et seq.*, as amended.

Specifically, without limitation upon the foregoing, the following declarations shall be controlling over any terms of this Declaration or By-Laws which are in conflict therewith. Any portions of this Declaration or By-Laws which are in conflict with this paragraph, or any portion of the regulations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, pertaining to apartments, are hereby deleted and the following rights of mortgagees are itemized as follows:

a) A first mortgagee of a Unit at his request is entitled to written notification from the Association of any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under this Declaration, By-Laws, or any of the PUD documents, which is not cured within thirty (30) days.

b) Any first mortgagee of a Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage, or deed of trust, or by foreclosure of the mortgage or deed of trust, or by 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 (except for claims for a pro rata share of such assessments or charges resulting from a pro rata real location of such assessments or charges to all Units including the mortgaged Unit).

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

   i) Change the pro rata interest or obligations of any Unit for (a) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, and for (b) determining the pro rata share of each Unit in appurtenant real estate and any improvements thereon, which are owned by Unit Owners in undivided pro rata interests (Common Elements);

   ii) Use hazard insurance proceeds for losses to the Common Elements for other than the repair, replacement or reconstruction of such improvements, except as provided by T.C.A. Section 66-27-118. In case of substantial loss to the Common Elements.

d) First mortgagees shall have the right to examine the books and records of the Association.

e) An adequate reserve fund for the replacement of the Common Elements will be established and funded by regular monthly payments rather than by special assessments.

f) A set forth in T.C.A., 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 Unit and not to the Property as a whole.

g) No Unit Owner, or any other party, shall have priority over any rights of the first mortgagees of Units in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

h) Any agreement for professional management of the Property, whether it be by Owner, her successors and assigns, or any other person or entity, may be terminated on 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.

i) The association shall give to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, or any lending institution servicing such mortgages as are acquired or insured by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, notice in writing of any loss to or the taking of Common Elements if such loss or taking exceeds Ten Thousand ($10,000.00) Dollars. The Association may rely upon the information contained in the book entitled "Mortgage of Units" as must be established pursuant to the By-Laws, for a list of mortgagees to be notified hereby.

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

k) Notwithstanding the above, any first mortgagee 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.

30. **Captions.** The captions herein are inserted only as a matter of convenience, and in no way define, limit or describe the scope of these provisions or the intent or any provision hereof.

31. **Gender and Number**. The use of the masculine or neuter gender in this Declaration and in the By-Laws shall be deemed to include the masculine, feminine and neuter gender whenever the context so requires, and the use of the singular shall be deemed to include the plural whenever the context so requires, and vice versa.

32. **Exhibits.** Developer hereby acknowledges and agrees that all schedules, addendum and exhibits referenced in this Declaration are attached hereto and incorporated herein.

33. **Attorney's Certificate.** The attorney's opinion as required under the terms of the TCA, Section 66-27-103 is attached hereto as Exhibit D and made a part hereof.

[Next Page is Signature Page.]

IN WITNESS WHEREOF, the undersigned has executed this Declaration this the 29TH day of January, 2015.

DEVELOPER:

D223, LLC

Justin Hicks, Chief Manager

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned, a Notary Public in and for the County and State, the within named Justin Hicks, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Chief Manager of D223, LLC, a general partnership, and that he, acting in such capacity, and authorized so to do, executed the foregoing instrument on behalf of said corporation for the purposes therein contained.

Witness my hand and seal this 29TH day of January, 2015.

STEVEN T. MORRIS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires July 3, 2017

Notary Public

EXHIBIT A

PROPERTY DESCRIPTION

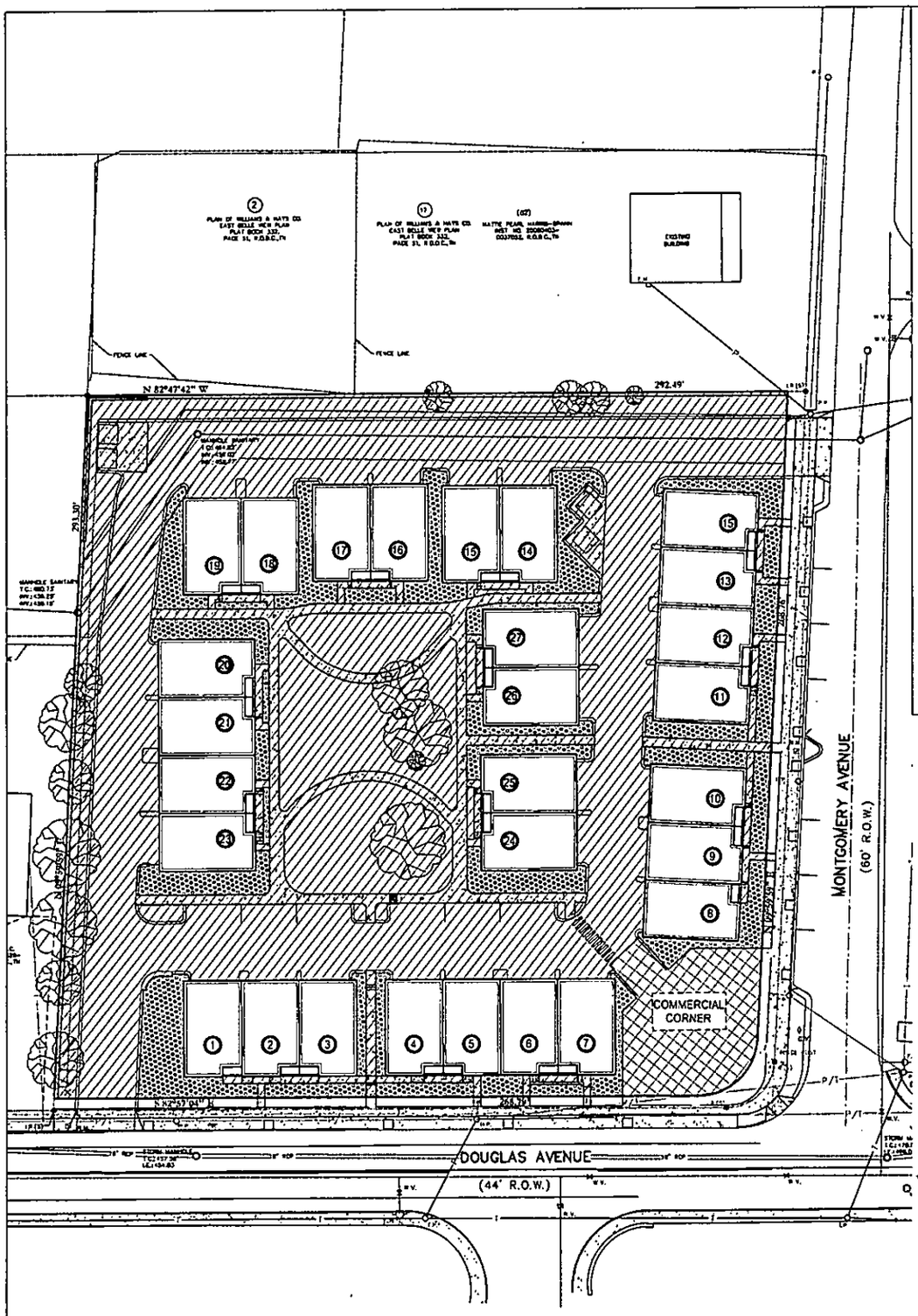
Land in Davidson County, Tennessee, being Flats at Highland Heights Townhomes as shown on Exhibit B to the Declaration of Covenants, Conditions and Restrictions for The Flats at Highland Heights Master, of record at Instrument No. 20150203-0010059, Register's Office for Davidson County, Tennessee, to which plat reference is hereby made for a more particular description of said property.

Being a portion of the same property conveyed to D223, LLC, a Tennessee limited liability company, by Quitclaim Deed from D220, LLC, a Tennessee limited liability company, D222, LLC, a Tennessee limited liability company and D223, LLC, a Tennessee limited liability company, dated July 23, 2014 and recorded 7/23/2014 at Instrument No. 20140723-0065568, Register's Office for Davidson County, Tennessee.

EXHIBIT B

PLAT

See attached.



Private Element

Common Element

Residential Limited Common Element

Commercial Corner

Dale & Associates

Consulting Civil Engineering/Land Planning & Zoning
Landscape Architecture/Surveying

516 Heather Place Nashville, Tn 37204 (615) 297-5166

THE FLATS OF HIGHLAND HEIGHTS A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

OWNER: D223, LLC	THIS DRAWING SHOULD NOT BE REPRESENTED TO BE A LAND SURVEY. IT SHOULD NOT BE RELIED UPON FOR THE CONSTRUCTION OF FENCES OR ESTABLISHING THE EXACT LOCATION OF PROPERTY LINES.
ADDRESS: 723 DOUGLAS AVE	
NASHVILLE, DAVIDSON CO, TN 37207	
PT LOTS 1, 2, 17 & 18 BELLE VIEW PLAN	NO CORNERS WERE SET OR RESET AT THE TIME OF THIS INSPECTION.
DB-20140723 0065568	
TAX MAP 71-16, PARCEL 80	THIS SITE HAS NOT BEEN FIELD RAN BY A SURVEY CREW. BOUNDARIES ARE APPROXIMATE.
DATE: 1-7-2015	"EXHIBIT B"
DA JOB NUMBER: 13105	

MICHAEL CHRISTOPHER GARRIGAN
REGISTERED ENGINEER
AGRICULTURE
COMMERCE
No. 0011072G
STATE OF TENNESSEE

1/7/15

EXHIBIT "C"

BY-LAWS OF

THE FLATS AT HIGHLAND HEIGHTS

ARTICLE I

OFFICE

Section 1. Principal Office. The principal office of the Association shall be maintained at, or at 731 Douglas Avenue, Nashville, TN 37207, or at such other locations as the Board of Directors may designate.

Section 2. Place of Meetings. All meetings of the Association shall be held at its principal office unless some other place is stated in the call.

ARTICLE II

ASSOCIATIONS OF UNIT OWNERS

Section 1. Annual Meeting. The annual meeting of the Association (except for the First Meeting, as hereinafter defined) shall be held on the second Tuesday of each July. The first annual meeting of the Association (the "First Meeting') will be called by Developer at such time as, in its discretion, it deems best, but in no event shall such meeting take place later than the expiration of the Developer Control Period.

Section 2. Special Meetings. Special meetings may be held at any time upon the call of the President or upon the call of at least three (3) Unit Owners. Upon receipt of such call, the Secretary shall send out notice of the meeting to all of the members Association.

Section 3. Notice of Meetings. A written or printed notice of every meeting of the Association, stating whether it is an annual meeting or special meeting, the authority for the call of the meeting, the place, day and hour thereof and the purpose therefore, shall be given by the Secretary of the person or persons calling the meeting at least ten (10) days before the date set for such meeting. Such notice shall be given to each member in any of the following ways: (a) by any manner permitted under the Declaration, or (b) by leaving the same with him personally, or (c) by leaving the same at the residence or usual place of business of such member, or (d) by mailing it, postage prepaid, addressed to such member at his address as it appears on the records of the Association. If notice is given pursuant to the provisions of this section, the failure of any member to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings at such meeting. Upon written request for notices, mailed by certified mail, addressed to the Secretary of the Association at the address of the Association, the holder of any duly recorded first mortgage or deed of trust against any such Unit may obtain a copy of any and all notices permitted or required to be given, and any such mortgages requesting such notice shall thereafter receive all notices sent to the members from and after receipt of said request until said request is withdrawn or said mortgage is discharged of Record.

Section 5. Waiver of Notice. The presence of all the members, in person or by proxy, at any meeting shall render the same a valid meeting, unless any member shall, at the opening of such meeting, object to the holding of the same for noncompliance with the provisions of Section 3 of this Article II. Any meeting so held without objection shall, notwithstanding the fact that no notice thereof was given, or that the notice given was improper, be valid for all purposes, and at such meeting any general business may be transacted and any action may be taken; provided, however, that where a member has pledged his vote by mortgage, deed of trust or agreement of sale and the Association has been notified of the same, in writing, only the presence of the pledgee will be counted in determining whether the notice is waived with regard to business dealing with such matters upon which the member's vote is so pledged.

Section 6. **Quorum; Voting.** At any meeting of the Association, a simple majority of the Unit Owners, present or by proxy, shall constitute a quorum, and, except as otherwise provided herein, in the Declaration, the concurring vote of a Majority of the Unit Owners shall be valid and binding upon the Association. In the event a member has pledged his vote by mortgage, deed of trust or agreement of sale, the member's vote will be recognized in computing a quorum with respect to any business conducted concerning such matters upon which said member's vote is so pledged or mortgaged unless the mortgage, deed of trust or agreement of the sale provides otherwise and the Association is notified thereof, in writing, in which event such instruments shall control. In the event of such mortgage or pledge, the Unit Owner shall provide the Association with a copy of the pledging or mortgaging instrument.

Section 7. **Membership; Voting.** Any person or combination thereof owning any Unit duly recorded in his name, the ownership of which shall be determined by the records of the Register's Office for Davidson County, Tennessee, shall be a member of the Association, and either in person or by proxy entitled to a vote equivalent to one vote for each Unit so owned at all meetings of the Association. Any provisions to the contrary notwithstanding, co-owners or joint owners shall be deemed one Unit Owner and one member. The authority given by a member to another person to represent such member at meetings of the Association shall be in writing, signed by such member (or if a Unit is jointly owned then by co-owners or joint owners, by all such co-owners or joint owners; or if such member is a corporation, by the proper officers thereof), and shall be filed with the Secretary, and unless limited by its terms, such authority shall be deemed good until revoked in a writing filed with the Secretary. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association with respect to any Unit owned or held by him in such capacity, whether or not the same shall have been transferred to his name by a duly recorded conveyance. In case such Unit shall not have so been transferred to his name, he shall satisfy the Secretary that he is the executor, administrator, guardian or trustee holding such Unit in such capacity. Whenever any such Unit is owned by two or more person jointly according to the Record, the cote therefore may be exercised by any one of the owners present in the absence of protest by the other or others; PROVIDED, HOWEVER, that when the vote of an owner or owners has been pledged by mortgage or deed of trust of Record and the Association has been notified, in writing, only the vote of the pledgee will be recognized upon those matters upon which the owner's or owners' vote is so pledged except as otherwise provided in Section 6.

Section 8. **Order of Business.** The order of business at the annual meeting and, as far as practical, at other meetings shall be:

(1) Collection of any ballots not yet cast.

(2) Call to order by President.

(3) Certifying of proxies and establishment of quorum.

(4) Reading and disposal of any unapproved minutes.

(5) Reports of Officers.

(6) Election of Directors.

(7) Unfinished business.

(8) New business.

(9) Adjournment.

Section 9. **Adjournment.** Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by the majority vote of the members present, whether a quorum be present or not, without notice other than the announcement at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted by a quorum at the meeting originally called.

Section 10. **Eligibility.** The members of THE FLATS AT HIGHLAND HEIGHTS MASTER, Inc., a Tennessee not-for-profit corporation, shall consist of the Unit Owners of the property known as The Flats at Highland Heights (the "Property"). If a Unit Owner is a trust, then the member shall be a beneficiary of such trust, and if a Unit Owner or such a beneficiary is a corporation or partnership, the member may be an officer, partner or employee of such Unit Owner or beneficiary.

Section 11. **Secession.** The membership of each Unit Owner shall terminate when he ceases to be a Unit Owner, and upon the sale, transfer, or other disposition of his ownership interest in the property, his membership in the Association shall automatically be transferred to the new Unit Owner succeeding to such ownership interest.

No Unit Owner who is in default in the payment of his assessments hereunder shall be entitled to exercise his right to vote until he has cured such default. A Unit Owner shall be deemed to be in default if he has not paid his assessments to the Board, its agent, or a paying Unit Owner within fifteen (15) days after the due date thereof. A Unit Owner may protest the amount of the assessment, but it still must be paid during the pendency of his protest to the Board.

ARTICLE III

BOARD OF DIRECTORS

Section 1. **Number and Qualifications.** The affairs of the Associations shall be governed by a board of directors (referred to in the Horizontal Property Act of the State of Tennessee as the "board of administrators" and sometimes referred to herein as the "Board") composed of three (3) persons, two (2) members (hereinafter referred to as "Directors"), and all such directors shall be Unit Owners (or owners of an interest in a Unit); provided, until such time as the First Meeting occurs, the members of the Board shall hold office for a term of three (3) years and until his successor shall be elected and qualified, shall be appointed by the Developer and shall not be required to be Unit Owners. Thereafter, the members of the Board shall include at least one member from the Board of each Supplemental Associations created hereunder. Those candidates for election as director receiving the greatest number votes cast either in person or by proxy at the meeting shall be elected.

Section 2. **Powers and Duties.** The Board of Directors shall have all of the powers and duties granted thereto in the Declaration and all other powers and duties necessary for the administration of the affairs of the Association, and may do all such acts and things as are not by law, by the Declaration or by these Bylaws directed to be exercised and done by the Unit Owners.

Section 3. **Other Powers and Duties.** The Board shall have the following powers and duties:

a) To elect and remove the officers of the Association;

b) To administer the affairs of the Association and the Property;

c) To engage the services of a Manager to maintain, repair, replace, administer, and operate the Property or any part thereof for all Unit Owners, upon such terms and for such compensation and with such authority as the Board may approve; provided, however, that any management agreement relating to the Property shall be terminable for cause upon thirty (30) days' notice and shall have a term of not less than one (1) year nor more than three (3) years, which term shall be renewable upon approval of the Board of Directors;

d) To formulate policies for the administration, management and operation of the Property and the Common Elements, as defined in the Declaration, thereof;

e) To adopt rules and regulations, with written notice thereof to all Unit Owners, governing the administration, management, operation and use of the Property and the Common Elements, and to amend such rules and regulations from time to time and to establish reasonable financial assessments for infractions thereof;

f) To provide for the surveillance, maintenance, repair, and replacement of the Common Elements and payments therefore, and to approve payment vouchers or to delegate such approval to the officers or the manager or Managing Agent;

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 to delegate any such powers to the Manager (and any such employees or other personnel who may be the employees of a Manager);

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 as provided in the Declaration and these Bylaws;

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 Unit Owners their respective shares of such estimated expenses, as hereinafter provided;

k) Unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of Unit Owners as expressed in resolutions duly adopted at any annual or special meeting of Unit Owners and of the Association;

l) To secure insurance policies as required by the Declaration, and in this regard, annually to review the amounts of coverage afforded by such policies;

m) To be responsible for and maintain all sidewalks, roads, utilities, and any other services of a public nature that are classified as Common Elements in the Declaration;

n) To exercise all other powers and duties of the board of administration or Unit Owners as a group that are provided in the Act, and all powers and duties of a board of managers or a board of directors referred to in the Declarations or these Bylaws; and

o) To borrow money for the purpose of repair or restoration of Common Elements without the approval of the members of the Association;

Section 4. **Manager; Employees Generally.** The Manager shall perform such duties and services as the Board of Directors shall authorize, including, but not limited to, the duties listed in Sections 2 and 3 of this Article. The duties conferred upon the Manager by the Board of Directors may be at any moment revoked, modified or amplified by the cote of the Association in a duly constituted meeting. The Board of Directors and/or the Manager (with the approval of the Board of Directors) may employ any other employee or agents to perform such duties at such salaries as the Board of Directors may establish. The Board of Directors may enter into such service contracts on behalf of the Association as are necessary and appropriate and shall have authority, but not the obligation, to assume, on behalf of the Association, any initial service contracts entered into by Developer that comply with the requirements and limitations imposed herein.

Section 5. **Election and Term of Office.** Beginning at the First Meeting, the directors of the Association shall be elected by the affirmative vote of a Majority of the Unit Owners. At the First Meeting of the Associations, the terms of the office for the first board of directors (the "First Board") shall be fixed wherein one (1) director shall serve for two (2) years and one (1) director shall serve for one (1) year. At the expiration of the initial term of office of each respective director, his successor shall be elected by all those entitled to vote to serve a term of one (1) year. The directors shall hold office until their successors have been elected and hold their first meeting.

Section 6. **Vacancies.** Vacancies in the Board caused by any reason other than the removal of a director by a vote of the Association shall be filled by vote of the majority of the remaining

directors, even though they may constitute less than a quorum; and each person so elected shall be a director until a successor is elected at the next annual meeting of the Association; provided, the Developer shall fill any vacancies prior to the First Meeting.

Section 7. **Removal of Directors.** At any regular meeting or special meeting duly called, any one or more of the elected directors may be removed with or without cause by not less than sixty-seven percent (67%) of the Unit Owners and a successor may then and there be elected to fill the vacancy thus created; provided, prior to the First Meeting, Developer shall have the sole and exclusive right to appoint and remove any Director. Any director whose removal has been proposed by the Unit Owners shall be given an opportunity to be heard at the meeting.

Section 8. **Compensation**. No compensation shall be paid to directors for their services as directors. A director may not be an employee of the Association.

Section 9. **Organizational Meeting.** The first meeting of the newly elected Board of Directors shall be held within one (1) month of election at such place as shall be fixed by the directors at the meeting at which such directors were elected, and no notice shall be necessary to the newly elected directors in order legally to constitute such meeting, providing the whole board is present.

Section 10. **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by not less than one-half (1/2) of the directors. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, addressed to his residence, or by telephone, at least ten (10) days prior to the day named for such meeting.

Section 11. **Special Meetings.** Special meetings of the Board of Directors may be called by the President on ten (10) days' notice to each director, given personally or by mail, addressed to his residence, or by telephone, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of not less than one (1) director.

Section 12. **Waiver of Notice.** Before or at any meeting of the Board of Directors, any director may, in writing waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 13. **Board of Directors' Quorum.** At all meetings of the Board of Directors, one hundred percent (100%) of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting to a different time. At any such adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

Section 14. **Bonds of Officers and Employees.** The Board of Directors may, at its sole discretion, require that all officers and employees (including without limitation any management agent) of the corporation handling or responsible for corporate funds shall be covered by blanket fidelity bonds name the Association as obligee, which bonds shall be in the amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Project. Each such bond shall contain an agreement to notify the Board, the holder of a first mortgage or deed of trust on a Unit and every other person in interest who shall have requested such notice at least thirty (30) days' prior notice of any cancellation or material alteration of such bond. The premiums on such bonds shall be paid by the Association as a common expense of the Association.

Section 15. **Power to Take Any Action.** Whenever in these By-Laws the Association is given the power to take any action, it is the intention of these By-Laws that the Board shall act for the Association in all cases, except and to the extent that it is expressly provided that action be taken upon vote of the Unit Owners.

ARTICLE IV

OFFICERS

Section 1. **Designation.** The principal officers of the Association shall be a President and a Secretary, all of whom shall be elected by the Board of Directors. Justin Hicks shall act as President of the Association until the President has been named by the Board of Directors. The directors may appoint a vice president, treasurer, assistant treasurer, assistant secretary, and such other officers as in their judgment may be necessary. An officer may serve in more than one capacity; provided, however, that there shall be no less than at least two (2) persons serving as officers; and further provided that no one person shall serve as both President and Secretary simultaneously. At each regular annual meeting of the Board, the Directors present at such meeting may elect the following officers of the Association by a majority vote:

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

b) A Secretary/Treasurer, who shall keep the minutes of all meetings of the Board and of Unit Owners, financial records, and who shall, in general, perform all the duties incident to the office of Secretary/Treasurer; and

c) Such additional officers as the Board shall see fit to elect.

Section 2. **Election of Officers.** The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors.

Section 3. **Removal of Officers.** Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with our without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors for such purpose.

Section 4. **President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties that are usually vested in the office of president of an association, including but not limited to the power to appoint committees from among the Unit Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. **Vice President.** The Vice President, if any, shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 6. **Treasurer.** The Treasurer, if any, shall have the responsibility for Association funs and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposits of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

Section 7. **Secretary.** The Secretary shall attend and keep the minutes of all meetings of the Board of Directors or of the Association; shall give all notices as provided by these Bylaws, and shall have other powers and duties as may be incidental to the office of Secretary, given him by these Bylaws or assigned to him from time to time by the Board of Directors. If the Secretary shall not be present at any meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose.

Section 8. **Auditor.** The Association may at any meeting appoint some person, firm or corporation engaged in the business of auditing to act as auditor of the Association and to perform such audits and fiscal duties as may be requested of him by the Association.

Section 9. **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 10. **Terms of Office.** Each officer shall hold office for the term of one (1) year and until his successor shall have been appointed or elected and qualified.

Section 11. **Vacancies.** Vacancies in any office shall be filled by the Board by a majority vote of the members thereof at a 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. Any officer may be removed for cause at any time by vote of two-thirds (2/3) of the total membership of the Board at a special meeting thereof.

Section 12. **Compensation.** The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by the Unit Owners.

ARTICLE V

OBLIGATIONS OF THE UNIT OWNERS

Section 1. **Expenses and Assessments.** Every Unit Owner shall contribute, pro rata on the basis of his Ownership Percentage as set forth in the Declaration, toward the expenses of administration of the Property and the Association, including but not limited to all types of insurance and the costs of operation, maintenance, repair and replacement of the Common Elements. The Association shall fix a monthly charge for each Unit in an amount sufficient to provide for its pro rata share of all such current expenses on the basis of such Unit Owner's Ownership Percentage, reasonable reserves for future expenses of administration, reasonable reserves for the expenses of utilities, periodic maintenance, repair and replacement associated with the Common Elements and such other expenses as the Association may deem proper, subject to adjustment from time to time as the Association may deem necessary. Such monthly charge shall be due and payable in advance on the first day of every month, shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid, and such charges, together with interest as aforesaid and reasonable attorney's fees of the Association (all as provided in the Declaration) shall be a lien on the Unit, assessed prior in right to all other charges whatsoever except assessments, liens and charges in favor of the State of Tennessee and Davidson County for taxes past due and unpaid on such Unit, and amounts and liabilities secured by first mortgage instruments duly recorded.

Section 2. **Supplemental Budget.** 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, 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 Unit Owner, and thereupon a supplemental assessment shall be made to each Unit Owner for his pro rata share based on his Ownership Percentage of such supplemental budget.

Section 3. **Special Assessments.** The Board shall have the right to levy a special assessment ("Special Assessment") upon the occurrence of a casualty (including, but not limited to, drought, flood, casualty losses, natural disasters, vandalism, etc.) as necessary and in the amount necessary to repair or replace any portions of the Property installed or maintained by the Association to the extent that the other funds are not available for such repairs or replacement, unless a decision is made not to restore the such damage as provided in Declaration. In addition, the Unit Owners, by at least a sixty-seven percent (67%) affirmative vote of the total Unit Owners entitled to vote, may levy a Special Assessment from time to time or at any time. Any Special Assessment levied hereunder shall be payable within thirty (30) days from the date of the Assessment, or such later date as may be specified by the resolutions on consent of the Unit Owners approving such Special Assessment, subject to the terms set forth in Section 10(c) of the Declaration.

Section 4. **Working Capital and Transfer Fees.** A working capital fund shall be maintained by the Association. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of the closing of the sale of each Unit and maintained in an

account for the use and benefit of the Association. The purpose of the working capital fund is to provide the Association with cash to meet unforeseen expenditures, and/or to acquire additional equipment or services deemed necessary and advisable by the Board, and disbursements from such fund shall be made as directed by the Board. Amounts paid into the working capital fund shall in no event be considered advance payment(s) of monthly assessments. Upon the transfer of ownership of any Unit, the seller and buyer of said Unit must promptly notify the Association of the name and mailing address of the new owner; a reasonable transfer fee may be charged if such fee is approved by the Board.

Section 5. **Maintenance and Repair.**

(a) Every Unit Owner must perform promptly all maintenance and repair work within his Unit and Limited Common Elements that, if omitted, would affect the Property in its entirety or a part belonging to other Unit Owners, and is responsible for the damages and liabilities that his failure to do so may cause.

(b) All the repairs of internal installations of a Unit such as water, light, power, sewer, telephone and sanitary installations, lamps and all other accessories belonging to the Unit area shall be maintained at the Unit Owner's expense.

(c) A Unit Owner shall reimburse the Association for any expenditure incurred in repairing or replacing any Common Elements damaged through his fault.

Section 6. **Use of Units.** All Units shall be used in accordance with the provisions of the Bylaws, the Declaration and the Rules and Regulations.

Section 7. **Rules and Regulations.** In order to assure the peaceful and orderly use and enjoyment of the Project and Common Elements of the Property, the Board of Directors may from time to time adopt, modify and revoke, in whole or in part, the Rules and Regulations for the Property, governing the conduct of persons in said Property as it may deem necessary. The Rules and Regulations, upon adoption, and every amendment, modification and revocation thereof, shall be delivered promptly to each Unit Owner and shall be binding upon all members and occupants of the Property. The Board may not adopt Rules and Regulations that conflict with or are in contravention of the Declaration or these Bylaws.

Section 8. **Deeds of Trust and Mortgages.** Any holder of a deed of trust or mortgage with respect to a Unit may file a copy of such instrument with the Board of Directors through the Secretary, who shall be required to notify such holder or mortgagee of:

(1) Any condemnation loss or any casualty loss that affects a material portion of the property or the Unit covered by such mortgage or deed of trust;

(2) Any delinquency in the payment of expenses or charges owed relating to the Unit that is covered by such mortgage or deed of trust that remains uncured for sixty (60) day, and that the holder or mortgagee may, at its option, pay such delinquent expenses;

(3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(4) Any proposed action that would require the consent of a specified percentage of deed of trust or mortgage lien holders.

Section 9. **Insurance.** The Board on behalf of the Association and its common expense shall at all times keep the Common Elements insured against loss or damage by fire with extended coverage in an insurance company authorized to do business in the State of Tennessee in accordance with the Declaration.

ARTICLE VI

EXECUTION OF INSTRUMENTS

Section 1. **Instruments Generally.** All checks, drafts, notes, bonds, acceptances, contracts and all other instruments except conveyances shall be signed by such person(s) as shall be designated by resolution of the Board of applicable thereto.

ARTICLE VII

LIABILITY OF OFFICERS, DIRECTORS AND MEMBERS

Section 1. **Exculpation.** No director or officer of the Association shall be liable for acts or defaults of any other officer or member or for any loss sustained by the Association or any member thereof, unless the same has resulted from his own willful misconduct or negligence.

Section 2. **Indemnification.** The Association shall indemnify and hold harmless each of its directors and officers, each member of any committee appointed pursuant to these Bylaws, the Board and/or 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 Developer, on behalf of the Unit Owners, or arising out of their status as directors, officers, committee members or Developer, unless any such contract or act shall have been made fraudulently or with gross negligence 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 person(s) being or having been such director, officer 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 or fraud in the performance of his duties as such director, officer, 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(s) being adjudged liable for gross negligence or fraud in the performance of his or their duties as such director, officer committee member or Developer.

Section 3. **Success on Merits.** To the extent that the Developer or a member of the Board of Directors or an officer of the Association or a member of any committee appointed pursuant to the Bylaws of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 2 of this Article VII, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonable incurred by him in connection therewith.

Section 4. **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 of Directors in the specific case upon receipt of an undertaking by or on behalf of the person or entity seeking such indemnification or payment in advance to repay such amount unless it ultimately shall be determined that he is entitled to be indemnified by the Association as authorized in this Article VII.

Section 5. **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 the Association's 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 or the directors, Board, officer, members of such committees or Developer, shall be limited to such proportion of the total liability hereunder as said Unit Owner's percentage of interest in the Common Elements bears to the total percentage interest of all of the Unit Owners in the Common Elements. Every agreement made by the directors, Board, officers, members of such committees, Developer or the Manager on behalf of the Unit Owners shall provide that the directors, Board, officers, members of such committees, Developer or the Manager, as the case may be, are acting only as agents for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements .

ARTICLE VIII

AMENDMENT

Section 1. **Amendment.** These Bylaws may be amended, modified or revoked in any respect from time to time by vote of not less than sixty-seven percent (67%) of the Unit Owners at a meeting duly called for the purpose; PROVIDED, HOWEVER, that the contents of these Bylaws shall always contain those particulars that are required to be contained herein by the Act; and PROVIDED, FURTHER, that no modification of or amendment to these Bylaws shall be valid unless set forth in an amendment to the Declaration; and PROVIDED, FURTHER, that these Bylaws may be amended by the Developer in the same manner an pursuant to the same limitation set forth in Section 25 of the Declaration.

Section 2. **Conflict.** In the event of any conflict between the provisions of these Bylaws and the provisions of the Declaration, the Declaration shall govern and apply.

ARTICLE IX

MISCELLANEOUS

Section 1. **Terminology.** When used herein, the singular shall include the plural, and vice versa, and the masculine, feminine or neuter gender shall include all other genders, as the context requires.

ARTICLE X

ARTICLE X. DEFINITIONS

Section 1. **Terms Defined in Declaration.** Capitalized terms not defined herein shall have the meaning given them in that certain Declaration for The Flats at Highland Heights Masters executed by Developer, to which these Bylaws are attached and of which these Bylaws are a part.

ARTICLE XI

ASSESSMENTS

Section 1. **Annual Budget.** The Board shall establish an annual budget to provide for the needs of the Units. Such budget shall take into account the estimated common expenses and cash requirements for the year, including but not limited to salaries, wages, payroll taxes, legal and accounting fees, working capital funds, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, and all other common expenses.

Section 2. **Lien.** It shall be the duty of every Unit Owner to pay his equal share of the expenses as provided in the Declaration, and as assessed in the manner provided.

If any Unit Owner shall fail or refuse to make any such payment when due, such delinquent payment shall be subject to a late charge in an amount established by the Board, and such delinquent payment shall also bear interest at the highest permissible rate of interest allowed in the State of Tennessee. Such delinquent payment, together with penalty and interest, shall constitute a lien, as provided in the Act and Declaration, enforceable by the Board and/or Paying Unit Owner, on the interest of such Unit Owner in the Property.

The Association, acting through 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 attorney's fees to be fixed by the court. Furthermore, if any Unit Owner shall fail or refuse to pay when due his proportionate share of the expenses, the Association, acting through its Board, shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Horizontal Property Act, the Declaration, or these By-Laws, or as otherwise available at law or in equity, for the collection of all unpaid assessments.

Section 3. **Records and Statement of Account.** The Board shall cause to be kept detailed and accurate records in chronological order of expenditures affecting the Common Elements, specifying and itemizing the common expenses incurred.

Section 4. **Discharge of Liens.** The Board may cause the Association to discharge any mechanic's lien or other encumbrances 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 attorney's fees, incurred by reason of such lien.

ARTICLE XII

USE AND OCCUPANCY RESTRICTIONS

Section 1. **General.** No unlawful, noxious or offensive activities shall be carried on in any Unit or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board cause unreasonable noise or disturbance to others.

Each Unit Owner shall maintain his Unit and its Private Elements in good condition and in good order and repair, at his own expense, and shall not do or allow anything to be done which may increase the cost or cause the cancellation of insurance on other Units or on the Common Elements.

No Unit Owner shall display, hang, store or use any clothing, sheets, blankets, laundry, or other articles outside such Owner's Unit, or which may be visible from the outside of such Owner's 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 such Owner's Unit, or install outside such Owner's Unit any canopy or awning, or outside radio or television antenna, or Citizens Band radio transmitters, neon signs, or other equipment, fixtures or items of any kind, without the prior written permission of the Board or the written permission of the Managing Agent, acting in accord with the Board's discretion. The foregoing restrictions 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 patio or deck which is a Private Element. No owner of a Unit shall display, hang, store or use any signs or flags outside such Owner's Unit or which may be visible from the outside of such Owner's Unit (except for special event or sports flags for no longer than twenty-four (24) hours at a time) without the prior written permission of the Board or the written permission of the Managing Agent, acting in accord with the Board's discretion. So long as the Developer owns any Units, the Developer shall not require Board approval for signage it deems necessary for the marketing of the project.

No structure of a temporary character, trailer, motor home, boat, tent, shack, garage, barn, or other out-buildings 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 repair or rebuilding of the Buildings or any portion thereof.

Section 2. **Animals.** No animals shall be raised, bred, or kept in any Unit, except for dogs, household cats and small birds owned as household pets by a Unit Owner, provided that said pet is not kept for any commercial purpose, and provided that said pet 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.

All dogs owned by Unit Owners and kept in a Unit shall be on leash while outside the Unit, except that any Unit Owner may keep a dog in his fenced yard. All such dogs shall be exercised by the Unit Owner at places on the Property which do not interfere with the use and enjoyment of the same by other Owners. An Owner shall be responsible for all damage to Common Areas caused by said Owner's dog and the Owner shall clean up after such Owner's dog.

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 as prescribed from time to time in rules and regulations of the Board.

Section 4. **Use by Developer.** During the period of sale by the Developer of any Units, 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 said Buildings and Property as may be required for purposes of said sale of Units. While the Developer owns any of the Units and until each unit sold by it is occupied by the purchasers, the Developer and its employees may use and show one or more of such unsold or unoccupied Units as a model Unit or Units and may use one or more of such unsold or unoccupied Units as a sales office, and may maintain customary signs in connection therewith.

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 Common Elements. Storage of boats, trailers, campers, and motor homes on the Property shall not be permitted.

Section 6. **Wiring.** No Unit Owner shall overload the electrical wiring in a 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, given in accord with the Board's discretion.

Section 7. **Architectural Control.** The exterior of the Units shall not be altered or changed in any way without the written consent of the Board.

Section 8. **Patios.** All patios and decks shall be maintained by the Owner to which area is assigned and shall be designated as a Private Element.

Section 9. **Landscaping.** Landscaping shall be maintained by the applicable Unit Owner and shall be weeded and mulched as necessary in order to maintain appropriate curb appeal for this type of development. In the event a Unit Owner does not maintain the landscaped area the Board shall have the right to maintain the same and charge the applicable Unit Owner for said maintenance.

Section 10. **Fencing.** No fencing shall be allowed other than fencing installed by the Developer or as approved by the Board.

Section 11. **Parking.** Parking shall be in the areas so designated to each Unit as prescribed herein and subject to rules and regulations of the Board.

Section 12. **Single Family Residence.** Each unit shall be used as one single family residence only.

Section 13. **Rules and Regulations.** Unit Owners shall be subject to such further restrictions as may be contained in the rules and regulations of the Association concerning the use of Units and the Common Elements which may be enacted from time to time by the Board. Such rules and regulations shall be binding rules and regulations of the Association and copies of such rules and regulations and any amendments or additions thereto shall be furnished to all Unit Owners upon request.

ARTICLE XIII

CONTRACTUAL POWERS

No contract or other transaction between this Association and one (1) or more of its Directors, or between the Association and any corporation, firm or association in which one (1) or more of the Directors of the Association are Directors, or are financially interested, is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

a) The fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes and the Board or committee authorizes, approves or ratifies

the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Director or Directors; or

b) The contract or transaction is just and reasonable as to the Association at the time it is authorized or approved.

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction.

ARTICLE XIV

INDEMNIFICATION

Section 1. **General.** To the extent permitted by law, the Association shall indemnify and hold harmless each of its Directors and officers, and each member of any committee appointed pursuant to these By-Laws, against all contractual and other liabilities to others arising out of contracts made by, or other acts of such Directors, officers, or committee members on behalf of Unit Owners, or arising out of their status as Directors, officers, or committee members, unless any such contract or act shall have been made fraudulently or with gross negligence 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 otherwise, in which any such Director, officer or committee member may be involved by virtue of such person's being or having been such Director, officer, or committee member, 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 or fraud in the performance of his duties as such Director, officer, or committee member, or (b) any matter settled or comprised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there are not reasonable grounds for such person's being adjudged liable for gross negligence or fraud in the performance of his duties as such Director, officer or committee member.

Section 2. **Success on Merits.** To the extent that a member of the Board, or an officer of the Association, or a member of any committee appointed pursuant to these By-Laws, has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's 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 an undertaking by or on behalf of the persons or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article VIII.

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, officers, or members of such committees, or out of the aforesaid indemnity in favor of the Directors, officers, or members of such committees, shall be limited to such proportion of the total liability hereunder as said Unit Owner's percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements. Every agreement made by the Directors, officers, or members of such committees, or by the Managing Agent on behalf of Unit Owners shall provide that the Directors, officers, members of such committees, or the Managing Agent, as the case may be, are acting only as agents for Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his 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 VIII 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 his official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to a person or entity who has ceased to be a member of the Board, officer of the Association, or member of such committee, and shall inure to the benefit of their heirs, executors, administrators, successors and assigns of such person or entity.

ARTICLE XV

MORTGAGES

Section 1. **Notice to Board.** A Unit Owner who mortgages his Unit shall notify the Board of the name and address of his mortgagee and shall file a conformed copy of the note and deed of trust or mortgage with the Board; and the Board shall maintain such information in a book entitled "Mortgages of Units."

Section 2. **Notice of Unpaid Charges.** The Board, whenever so requested in writing by a mortgagee of a Unit, shall promptly report any then unpaid charges due from, or any other default by, the owner of the mortgaged Unit.

Section 3. **Notice of Default.** The Board, when giving notice to a Unit Owner of a default in paying charges or other default, shall send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has therefore been furnished to the Board.

Section 4. **Examination of Books.** Each Unit Owner and each mortgagee of a Unit shall be permitted to examine the books of account of the Association at reasonable times, on business days, but not more often than once a month.

Section 5. **Interest of Valid First Mortgagee.** The interest of valid first mortgagee shall be superior to the interest of the Board in the event of a default, and nothing in this instrument shall be construed to the contrary. If the first mortgagee has incorporated the terms of these By-Laws, the Declaration and the contract in its deed of trust, then said first mortgagee may at its option declare a default in its deed of trust by reason of any default hereunder, and may proceed to enforce its rights according to the terms of the deed of trust notwithstanding any enforcement instituted by the Board.

ARTICLE XVI

DEFINITION OF TERMS

The terms used in these By-Laws, to the extent they are defined therein, shall have the same meaning as set forth in the Declaration for THE FLATS AT HIGHLAND HEIGHTS MASTERS, of record in the Office of the Register of Deeds for Davidson County, Tennessee.

The term "member", as used in these By-Laws, means "Unit Owner" as defined in the Declaration.

ARTICLE XVII

CONFLICTS

These By-Laws are set forth to comply with the requirements of Chapter 27 of Title 66, Tennessee Code Annotated, as it may be amended from time to time, and to allow the By-Laws to control in specific situations where such law allows. In the event any of the By-Laws conflict with the provisions of said statute or of the Declaration, the provisions of said statute or of the Declaration, as the case may be, shall control.

EXHIBIT "D"

OWNERSHIP PERCENTAGES

UNIT NUMBER	SQUARE FOOTAGE	OWNERSHIP PERCENTAGE	NO. OF VOTES
1		3.57%	1
2		3.57%	1
3		3.57%	1
4		3.57%	1
5		3.57%	1
6		3.57%	1
7		3.57%	1
8		3.57%	1
9		3.57%	1
10		3.57%	1
11		3.57%	1
12		3.57%	1
13		3.57%	1
14		3.57%	1
15		3.57%	1
16		3.57%	1
17		3.57%	1
18		3.57%	1
19		3.57%	1
20		3.57%	1
21		3.57%	1
22		3.57%	1
23		3.57%	1
24		3.57%	1
25		3.57%	1
26		3.57%	1
27		3.57%	1
28		3.57%	1
Total		100%	2

EXHIBIT "E"

ATTORNEY'S CERTIFICATE

This document is intended to serve as the attorney's opinion which is required under the terms of Tennessee Code Annotated, Section 66-27-103. The undersigned, Steven T. Morris, an attorney licensed to practice law in the State of Tennessee, hereby declares (i) that the developer, D223, LLC, has indicated that all improvements shall be in substantial compliance with local building codes and (ii) that upon proper recording of this certificate and the following additional documents, all legal requirements for the creation of a Planned Unit Development under the terms of the Tennessee Horizontal Property Act, Tennessee Code Annotated, Section 66-27-103(b), have been met:

(1) Declaration of Covenants, Conditions and Restrictions for Townhomes at THE FLATS AT HIGHLAND HEIGHTS, a Horizontal Property Regime with Private Elements.

(2) By-Laws of THE FLATS AT HIGHLAND HEIGHTS HOA, Inc.

(3) Plat for THE FLATS AT HIGHLAND HEIGHTS, a Horizontal Property Regime, which plat shows private elements.

(4) Charter of THE FLATS AT HIGHLAND HEIGHTS HOA, Inc.

Witness my hand this 21st day of January, 2015.

Steven T. Morris