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THIS INSTRUMENT PREPARED BY:
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DECLARATION OF COVENANTS, CONDTIONS AND RESTRICTIONS FOR SALEM ON 5TH TOWNHOMES A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

THIS DECLARATION made and entered into by Jeff Zeitlin (hereinafter referred to as the "Developer").

W I T N E S S E T H:

WHEREAS, the Developer is the record owner of the legal title of a tract or parcel of real property located in Davidson County, Tennessee, and more particularly described on Exhibit "A" attached and made a part hereof (hereinafter referred to as the "Parcel"); and,

WHEREAS, the Developer desires to and does hereby submit the Parcel described on Exhibit "A" together with all the rest of the Property (as herein defined), and all rights and privileges belonging or in anyway pertaining thereto, to the provisions of the Horizontal Property Act of the State of Tennessee for the express purpose of establishing thereon a horizontal property regime with private elements to be known as Salem on 5th Townhomes; and,

WHEREAS, the Developer further desires to establish for their own benefit and for the mutual benefit of all future owners and/or occupants of the Property or any part thereof, certain rights, easements, and privileges in, over and upon the said premises and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof, for the purpose of enhancing and perfecting the value, desirability and attractiveness of

the Property.

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

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

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

(b) "Association" means Salem on 5th Townhomes Corporation, a Tennessee not-for-profit corporation.

(c) "Attorney's Certificate." The attorney's opinion as required under the terms of the T.C.A. Section 66-27-103 is attached hereto as Exhibit "D" and made a part hereof.

(d) "Board" means the Board of Directors of Salem on 5th Townhomes Corporation, a Tennessee not-for-profit corporation.

(e) "Buildings" mean the buildings located on the parcel and forming a part of the property and containing the Units. The buildings are delineated on the Plat attached as Exhibit B.

(f) "By-Laws" mean the By-Laws of the Salem on 5th Townhomes Corporation attached hereto as Exhibit "C" and made a part hereof, as amended from time to time. For purposes 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.

(g) "Common Elements" shall mean all of the Property, except the Units and Private Elements.

(h) "Limited Common Elements" shall mean those portions of the Common Elements designated herein for the exclusive enjoyment, benefit or use of the Unit to which it is

assigned.

(i) "Developer" shall refer to Jeff Zeitlin, his heirs and assigns.

(j) "Majority" or "majority of the Unit Owners" mean the owners of more than fifty (50%) percent of the Units.

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

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

(m) "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.

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

(o) "Private Elements" means and includes the area of the Parcel upon which a Unit is located as shown on the Plat for which fee simple ownership and exclusive use is reserved for that Unit only.

(p) "Plat" means the Plat, Plats of survey or site plans of the Parcel submitted to the provisions of the Act showing the location and number of each Unit and the exterior boundary of its Private Elements and other data necessary for identification, said Plat or Plats being attached hereto as Exhibit "B" consisting of two (2) pages.

(q) "Property" means all the land, property and space comprising the Parcel as defined in Item (n) above, and all improvements and structures erected, constructed or contained therein or thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures, and equipment intended for the mutual use, benefit or enjoyment of Unit Owners, submitted to the provisions of the Act.

(r) "Record" or "Recording" refers to the record or recording in the Register's Office for Davidson County, Tennessee.

(s) "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 the Declaration and By-Laws.

(t) "Unit" shall mean a portion of the Property as shown and designated in the Plat for separate ownership and shall include the Private Elements and the Buildings and improvements now and hereafter located thereon. Each Unit is identified by number on the Plat and may be held and conveyed by reference to such number. Conveyance of a Unit shall automatically convey the undivided membership of each Unit Owner in the Association. Each Unit will be assigned a street address. Any Unit may be jointly or commonly owned in any estate recognized under applicable law. For purposes herein, the term "Unit" shall equate to the same meaning as the term "apartment" in the Horizontal Property Act.

(u) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit, its respective Private Elements, and of the undivided interest in the Common Elements appurtenant thereto, and shall be deemed the same as "co-owner" under the Act. Unless specifically provided otherwise herein, Developer shall be deemed a Unit Owner so long as he is the legal title holder of any Unit.

2. **Submission of the Property to the Act**. The Developer by recording this Declaration does hereby submit and subject the Parcel and the Property to the provisions of the Act and does hereby establish a Horizontal Property Regime with Private Elements to be known as Salem

on 5th Townhomes.

3. **Plat.** The Plat sets forth the numbers and location of each Unit and other data as required by the Act.

4. **Units**. The legal description of each Unit shall consist of the identifying number of each Unit as shown on the Plat. Every deed, lease, mortgage, deed of trust, or other instrument shall legally describe a Unit by its identifying number as shown on the Plat and every such description by number shall he 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 front the whole Unit as shown on the Plat.

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

(a) There has been formed an Association having the name Salem on 5th Townhomes Corporation, a Tennessee not-for-profit corporation, which Association shall be the governing body for all Unit Owners, and shall be operated to provide guidelines for the maintenance, repair, replacement, administration, and operation of the property, as provided in the Act, this Declaration and By-Laws. The Unit Owners shall be members of the Association, with each Unit holding an undivided membership interest appurtenant to a Unit being in an equal share, subject to the provisions concerning voting hereinafter set forth. The By-Laws for the Association shall be the By-Laws attached to this Declaration as Exhibit "C" and made a part hereof, The Board of Directors of the Association shall be elected and serve in accordance with the provisions of the By-Laws. The fiscal year of the Association shall be deemed to be a calendar year. 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 any 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. 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 automatically succeed to the former Unit Owner's membership in the Association.

(b) Voting Membership.

Class A. Class A members shall be all Unit Owners with the exception of the Developer, and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one (1) vote be case with respect to any Unit.

Class B. The Class B member shall be the Developer and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease the earlier of (i) when 100% of the Units are sold or (ii) three (3) years from the date of the sale of the first Unit.

(c) Management of the Property. Subject to the provisions of Article II, Section 3(c) of the By-laws, the Board shall have the authority to engage the services of an agent (the "Managing Agent") to maintain, repair, replace, administer and operate the Property, or any part thereof, to the extent deemed advisable by the Board. Said agent shall be required to maintain fidelity bond coverage on its employees handling Association Funds. The cost of said services shall be a common expense.

(d) Use by the Developer. During the period of sale by the Developer, the Developer and/or any builder of any Unit or their agents, employees, contractors, etc) shall be entitled to access, ingress, egress from the buildings and property as may be required for purposes of sale of the Units.

(e) Non-Liability of the Directors, Board, Officer and Developer. To the extent permitted by law, neither the directors nor officers of the Association shall be personally liable to Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers, except for any acts or omissions found by a court to constitute gross negligence or fraud. Unit Owners shall indemnify and hold harmless each of the directors or officers and their respective heirs, executors, administrators, successors and assigns in accordance with the Charter of the Association and By-Laws.

(f) Interests of Association in Common Elements. Ownership of the Common Elements shall be vested in the Association.

6. **Board's Determination Binding.** In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of this Declaration or the By-Laws, the determination thereof by the Board shall be final and binding on all Unit Owners. If a dispute arises from or relates to these covenants or to the breach thereof, which dispute cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute either by mediation administered by the American Arbitration Association under its Commercial Mediation Rules or by another mediator mutually agreed upon by the parties, before resorting to arbitration. Any unresolved controversy or claim arising from or relating to these restrictions and covenants, or any other

dispute under this Declaration, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Mediation Rules or by another arbitrator mutually agreed upon by the parties, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If the parties agree, a mediator involved in the parties' mediation may be asked to serve as the arbitrator. All expenses in connection with any such mediation and/or arbitration, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the highest rate allowed by applicable law or such other uniform lawful rate as the Board shall determine, until paid, shall be charged to and assessed against such non-prevailing Unit Owner.

7. **Ownership of Interests in the Association.** Each Unit is hereby allocated an equal percentage ownership in the Association. The percentages of ownership interests shall remain constant unless hereafter changed by recorded amendment to the Declaration consented to in writing by the Unit Owners, in accordance with the requirements hereafter contained. Said ownership interest shall be an undivided interest, and the undivided membership interests in the Association shall be owned by the Unit Owners as Tenants in Common in accordance with their respective percentages of ownership. The ownership of a Unit shall not he conveyed separate from the undivided ownership in the Association appurtenant to such Unit. The undivided interest in the Association appurtenant to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering such Unit may refer only to the fee title to that Unit.

8. **Use of the Common Elements.** Each Unit Owner shall have the right to use the Common Elements in common with all other Unit Owners, as may be required for the purposes of

access, 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 agent, domestic employees, tenants, family members, customers, invitees, and licenses. However, each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements attributable to the Unit.

9. **Storage Areas, Driveways and Parking Spaces.** No storage units or areas shall be permitted upon the Property outside any Unit, excepting only those areas under the control of the Developer. Except as otherwise specified on the Plat, parking areas and/or driveways on the Property shall be Limited Common Elements, and shall be used by each respective Unit Owner (s) subject to the Rules and Regulations of the Association.

10. (a) **Common Expenses and Enforcement.** Each Unit Owner shall be responsible for paying his proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance with this Declaration and By-Laws (which expenses are herein sometimes referred to as "common expenses"), including, but not limited to, the maintenance and repair of the Property and any and all replacements and additions thereto. The common expenses shall include the cost and expense of the maintenance, repair and replacement of the landscaping irrigation system serving the Property, if applicable, even if such irrigation system is located within the Limited Common Elements appurtenant to an individual Unit; provided, however, the cost of the water to operate the irrigation system, if applicable, shall not be a common expense and shall be allocated among the Unit Owners. Such proportionate share of the common expenses for each Unit Owners hall be in accordance with his interest in the Association. Each Unit Owner shall be responsible for paying an equal share of the common expenses. The payment of common expenses shall be in such amounts and shall be

payable at such times as determined in the manner provided in the By-Laws. No Unit Owner shall be exempt from payment of his equal share of the common expenses by waiver or nonuse of enjoyment of the Common or Limited Common Elements or by abandonment of his Unit. If any Unit Owner shall fail to make such payment for common expenses when due, the amount thereof, together with interest thereon at the highest rate allowed by law from the date that said common expenses become due and payable, plus reasonable attorney's fees 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 the Property as provided in the Act. Except for a foreclosure sale described in subsection (b) below, 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. Likewise, all taxes and other levies and assessments by governmental taxing bodies shall be a lien against individual Units.

Notwithstanding the foregoing, Developer shall not be required to pay any assessments for common expenses in respect of Units owned by it prior to the sale of all Units; provided, however, that subsequent to the date of Recording of this Master Deed but prior to the sale of all Units, Developer shall fund any deficit in the operations of the Association after application of available funds from assessments for common expenses in respect of Units previously sold. After the sale of all Units, Developer shall have no responsibility for the maintenance, repair or replacement of any of the Common Elements except for its responsibilities as a Unit Owner as provided herein; however, should Developer advance any of its own funds for such expenses, it shall be entitled to a credit for all sums so paid against the assessments that it is required to pay as a Unit Owner.

(b) **Deed of Trust Protection**. The lien for 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. This subparagraph shall not be amended, changed, modified, or rescinded without the prior written consent of all Mortgagees and Beneficiaries of records.

11. **Mortgages and Deeds of Trust.** Each Unit Owner shall have the right, subject to the provisions herein, to mortgage his Unit together with his respective ownership interest in the Association. No Unit Owner shall have the right or authority to mortgage or place a lien on the Property or any part thereof, except to the extent of his own Unit and its appurtenant interest in the Association.

12. **Separate Real Estate Taxes.** Real estate taxes shall be separately taxed to each Unit Owner for his Unit and its appurtenant interest in the Association, as provided in the Act. In the event that such taxes for any year are not separately taxed to each Unit Owner, but rather are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective Percentage Interest in the Association, and, in said event, such taxes shall be a common expense.

13. **Insurance.** The Board, in its discretion, may obtain insurance for the Common Elements, if applicable, exclusive of the Units, Private Elements and/or Limited Common Elements, against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions, for the full insurable replacement

cost of the Common Elements, and against such other hazards and for such amounts as the Board may deem advisable. Insurable replacement cost shall be deemed the cost of restoring the Common Elements, or any part thereof, 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 Board, as the Trustee for the Unit Owner in proportion to the Unit Owners' respective percentages of ownership in the Association, as set forth in this Declaration, and for the holders of mortgages on the Units, if any. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against the Unit Owners. The premiums for such insurance shall be a common expense.

In the event of damage to or destruction of any Common Elements as a result of fire or other casualty covered by insurance proceeds (unless more than two-thirds (2/3) of all buildings require reconstruction), the Board shall, in its sole and absolute discretion, determine and without intervention of any Unit Owner arrange for the prompt repair and restoration of the damaged portions of all Common Elements substantially in accordance with the original plans and specifications therefore. Where the insurance indemnity is insufficient to cover the cost of such repairs and restoration, the deficit shall be paid by all Unit Owners with each Unit Owner to bear an equal proportion thereof. The Board shall not be responsible for the repair, replacement or restoration of any Unit or Private Elements for which the responsibility of maintenance and repair is that of a Unit Owner, or for furniture, furnishings, fixtures, appliances, or equipment installed in the Unit by a Unit Owner or occupant.

The Board shall obtain comprehensive public liability insurance, in such amounts as it deems desirable, and workmen's compensation insurance and other liability insurance in such amounts as it deems desirable, insuring each Unit Owner, Mortgagee of Record, the Association,

its officers, directors, and employees, Owner, and the Managing Agent, if any, from liability in connection with the Property. The premiums for such insurance shall be a common expense; however, premiums for such insurance shall be separately billed equally to each Unit Owner.

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 may also obtain such other insurance 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 By-Laws of the Association, from liability arising from the fact that said person is or was a director or officer of the Association, or a member of such a committee.

Each Unit Owner shall be responsible for obtaining his own insurance on his Unit, contents of his Unit and the Limited Common Elements serving his Unit, as well as his additions and improvements thereto, and those parts of the Unit for which the responsibility of maintenance and repair is that of the Unit Owner, and for decorations, furnishings, and personal property therein, and personal property stored elsewhere on the Property, if any. 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 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. If requested by the

Board, each Unit Owner shall be required to list the Association as an additional insured on said Unit's hazard insurance policy.

14. **Maintenance, Repairs, Replacements, and Easements.** Each Unit Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within and to the exterior of his Unit and the Limited Common Elements attributable thereto. Except to the extent hereinafter set forth, maintenance of, repairs to and replacements within the Common Elements shall be the responsibility of and shall be furnished by the Association, and the cost thereof shall be part of the common expenses, subject to Item No. 10 (a) herein and further subject to the By-Laws, and Rules and Regulations of the Association. The expenses for the maintenance, repair or replacement of a Unit's roof, water heater, furnace, air conditioner, heating, and air conditioning ducts, and plumbing and electrical wiring and other items including, but not limited to the Limited Common Elements, serving only such Unit, shall be borne by the Unit Owner to which such Limited Common Elements are appurtenant.

Unit 1 and Unit 2 share a common roof line. Notwithstanding the provisions of this Paragraph 14, the Unit Owners of Unit 1 and Unit 2 shall at their joint expense be responsible for all maintenance of, repairs to and replacements of the roofs of their respective Units. In the event the Unit Owners of Unit 1 and Unit 2 cannot agree on whether their roofs require maintenance, repair and/or replacement, the question shall be submitted to the Board whose decision shall be final. Provided, further that prior to the replacement of any roof, the type and color of any replacement material shall be submitted to the Board for its approval.

If, due to the act or neglect of a Unit Owner, or of his agent, domestic employee, tenant, family member, invitee, licensee or household pet, damage shall be caused to the Common Elements or Unit or Units owned by others, or maintenance, repairs or replacements

are required which would otherwise be a common expense, then such Unit Owner shall pay for such damage or such maintenance, repairs and replacements, to the extent not covered by the Association's insurance.

An 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 or Common Elements. An easement exists for ingress and egress and maintenance in favor of any public utility providing utility services to the Property and the Units.

The authorized representatives of the Association, Board, or of the Managing Agent with approval of the Board, shall be entitled to reasonable access to the Units and Limited Common Elements as may be required in connection with the preservation of any individual Unit or Limited Common Elements in the event of an emergency, or, if applicable, in connection with maintenance of, repairs to, or replacements within the Common Elements or Limited Common Elements, or to make any alteration required by any governmental authority.

15. **Alterations, Additions or Improvements.** Except as provided in paragraph No. 16 herein, no alteration of any Common Element, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Board. The Board may authorize alterations, additions and improvements of the Common Elements as provided in the By-Laws. Any Unit Owner may make alterations, additions, or improvements within his Unit without the prior written approval of the Board, but such Unit Owner shall be responsible for any damage to other Units, the Common Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements. Any alteration and/or maintenance made by a Unit Owner to the exterior of his Unit shall be in strict conformity to the architectural design and

scheme of the Unit as of the date of this instrument unless modified by the unanimous agreement of the Unit Owners.

16. **Decorating.** Each Unit Owner, at his own expense, shall furnish and be responsible for all decorating within his Unit and 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 decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his Unit and such Unit Owner shall maintain said interior surfaces in good conditions 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 windows and screens of a Unit shall be cleaned and washed, and any damage thereto repaired, 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, 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**. Subject to the provisions of the By-Laws, no part of the property may be used for purposes other than housing and the related common purposes for which the property was designed and as allowed by zoning laws. Each Unit shall be used as one single family residence or such other use permitted by this Declaration, and for no other purpose, except that professional and quasi-professional people may use their residence (not in

violation of municipal zoning laws) as an ancillary or secondary facility to an office established elsewhere. No unit may be offered by its owner to the public at large for temporary transient accommodations; however, nothing in this Section shall prohibit Unit Owners from leasing their Units to others to be used as a residence. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from: (a) maintaining his personal professional library; (b) keeping his personal business or profession records or accounts; or (c) handling his personal business or professional telephone calls or correspondence. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions.

The Common Elements shall be used only by Unit Owners and their agents, domestic employees, tenants, family members, customers, invitees, and licensees for access, ingress to, and egress from the respective Units and for such other purposes incidental to use of the Units. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner.

19. **Remedies.** In the event of any violation of the provisions of the Act, this Declaration, By Laws, or rules and regulations of the Association by any Unit Owner (either by his own conduct or by the conduct of any Occupant of his Unit), the Association, or its successors or assigns, shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, By-Laws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the

Unit and to sell the same as provided hereinafter in this Paragraph No. 19, or for any combination of remedies, or for any other relief. All expenses in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the highest rate allowed by applicable law or such other uniform lawful rate as the Board shall determine, until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the common expenses, and the Board shall have a lien for all of the same, as well as for nonpayment of common expenses, upon the Unit, and its appurtenant interest in the Association of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon 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 hereinafter set forth in Paragraph No. 10(b) hereof. In the event of any such default by a Unit Owner, 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. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board. This Paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of record of mortgage and deed of trust liens against the Units.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board 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 to summarily 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 by the conduct of any other Occupant of his Unit) shall violate the Act, or any of the covenants or restrictions or provisions of this Declaration, the By-Laws, or the regulations adopted by the Board, and if such default or violation shall continue for ten (10) days after notice to the Unit Owner in writing from the Board, or 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 Owner a notice in writing terminating the rights of said defaulting 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 Board against said defaulting Owner for a decree of mandatory injunction against such defaulting Owner or Occupant, or in the alternative, for a decree declaring the termination of said defaulting Owner's right to occupy, use, or control the Unit owned by him on account of said violation, and ordering that all the right, title and interest of said defaulting 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 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 attorney's fees, and all other expenses of the proceeding and sale, and all such items shall be taxes against said defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder, or any liens, 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 percentage of ownership in the Association, 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. **Amendments**. The provisions of this Declaration may be amended by agreement of the Unit Owners, by an instrument in writing, setting forth such amendment signed by a majority of the Unit Owners; provided, however, that all lien holders or record have been notified by certified mail of such amendment, and an affidavit by the Secretary of the Association certifying to such mailing is made a part of such instrument.

However, 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 amending any provision of this Declaration with respect to such action shall be signed by all Unit Owners and/or all lien holders or both as required by the Act or this Declaration. Any amendment 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 this Declaration may be amended 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 and/or FHLMC 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 provision 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. **Rights and Obligations.** Each Unit Owner, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration. All 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 which are more than administrative in nature such as, but not limited to, reservations and future rights of Developer are hereby incorporated into and made a part of this Declaration by reference. All rights, benefits and privileges 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 said land, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

All present and future Unit Owners 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, 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 front time to time, are assumed, accepted and ratified by such Unit Owner 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 mortgagee. 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.

23. **Condemnation.** In the event of a taking of part of the Common Elements in condemnation or by eminent domain, the award made for such taking shall be payable to the Association. If a majority of the Board in their sole and absolute discretion approves the repair and restoration of such Common Elements, the Board shall arrange for the repair and restoration of such Common Elements, and the Board shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event 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 such Unit's percentage of ownership in the Common Elements.

24. **Rights Reserved.** 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 or rules and regulations, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for such period as it considers appropriate for any infraction of its published rules and regulations;

(b) 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 or determination as to the purposes or as to the conditions thereof, shall be effective unless both members of the Association have agreed to such dedication, transfer, purpose, or condition;

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

25. **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 or townhomes, 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 Act.

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 planned unit developments or townhomes, 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 planned unit development or townhome 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 re-allocation 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 the Association;

(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) As 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.

(e) 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.

(f) Any agreement for professional management of the Property, whether it be by the Developer, its 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.

(g) 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.

(h) The interest of a first mortgagee in a mortgaged Unit shall be superior to the interests of any person, group, partnership, corporation, or entity of any kind, including any interest the Association, the 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.

(i) 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.

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

27. **Party Walls.**

(a) General Rules of Law to Apply. Each wall which is built as a part of the

construction of the Buildings located on the dividing line between Units (including any walls separating patio areas) shall constitute a party wall. The general rules of law regarding party walls and liability for property damage due to negligence, or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of repair and maintenance of a party wall shall be shared equally by the Unit Owners who make use of the wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the Unit Owners who use the wall shall restore it, and contribute to the cost of restoration thereof in proportion to such use by each Unit Owner; subject, however, to the right of any such Unit Owner to demand a larger contribution from the other Unit Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Unit Owner to contribution from any other Unit Owner under this Article shall be appurtenant to the Unit and shall pass to such Unit Owner's successors in title.

28. **Notices.** Notices provided for in the Act, Declaration or By-Laws shall be in writing and shall he addressed to the Association, at Salem on 5th Townhomes Corporation, c/o Jeffrey A. Zeitlin, 4301 Hillsboro Road, Suite 100, Nashville, Tennessee, 37215, or at such other address as hereinafter provided. Notices to any Unit Owner shall be sent to the address of the Unit. The Association may designate a different address or addresses for notices to it by giving written notice of such change of address to all Unit Owners. 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 he given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose Unit is subject to such mortgage or trust deed.

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

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 of any provision hereof,

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

[Signature page follows.]

IN WITNESS WHEREOF, the Developer has executed this Declaration on the day and year first above written.

DEVELOPER:

Jeff Zeitlin

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, the undersigned Notary Public, in and for the said county and state, the within named Jeff Zeitlin, the bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and official seal at office, this 25th day of January, 2016.

Notary Public

My Commission Expires: 06-19-16

ASHLEY W. MORGAN
STATE OF TENNESSEE NOTARY PUBLIC
RUTHERFORD COUNTY
My Commission Expires 06-19-2016

EXHIBIT "A"

TO THE DECLARATION
FOR
SALEM ON 5TH TOWNHOMES
A HORIZONTAL PROPERTY REGIME
WITH PRIVATE ELEMENTS

LEGAL DESCRIPTION

Land in Davidson County, Tennessee, being Lot No. 472 on the Plan of North Nashville Real Estate Company's property as of record in Book 21, Page 105, in the Register's Office for Davidson County, Tennessee, to which plan reference is made for a more complete description.

EXHIBIT "B"

TO THE DECLARATION

FOR

SALEM ON 5TH TOWNHOMES,

A HORIZONTAL PROPERTY REGIME

WITH PRIVATE ELEMENTS

(Plat)

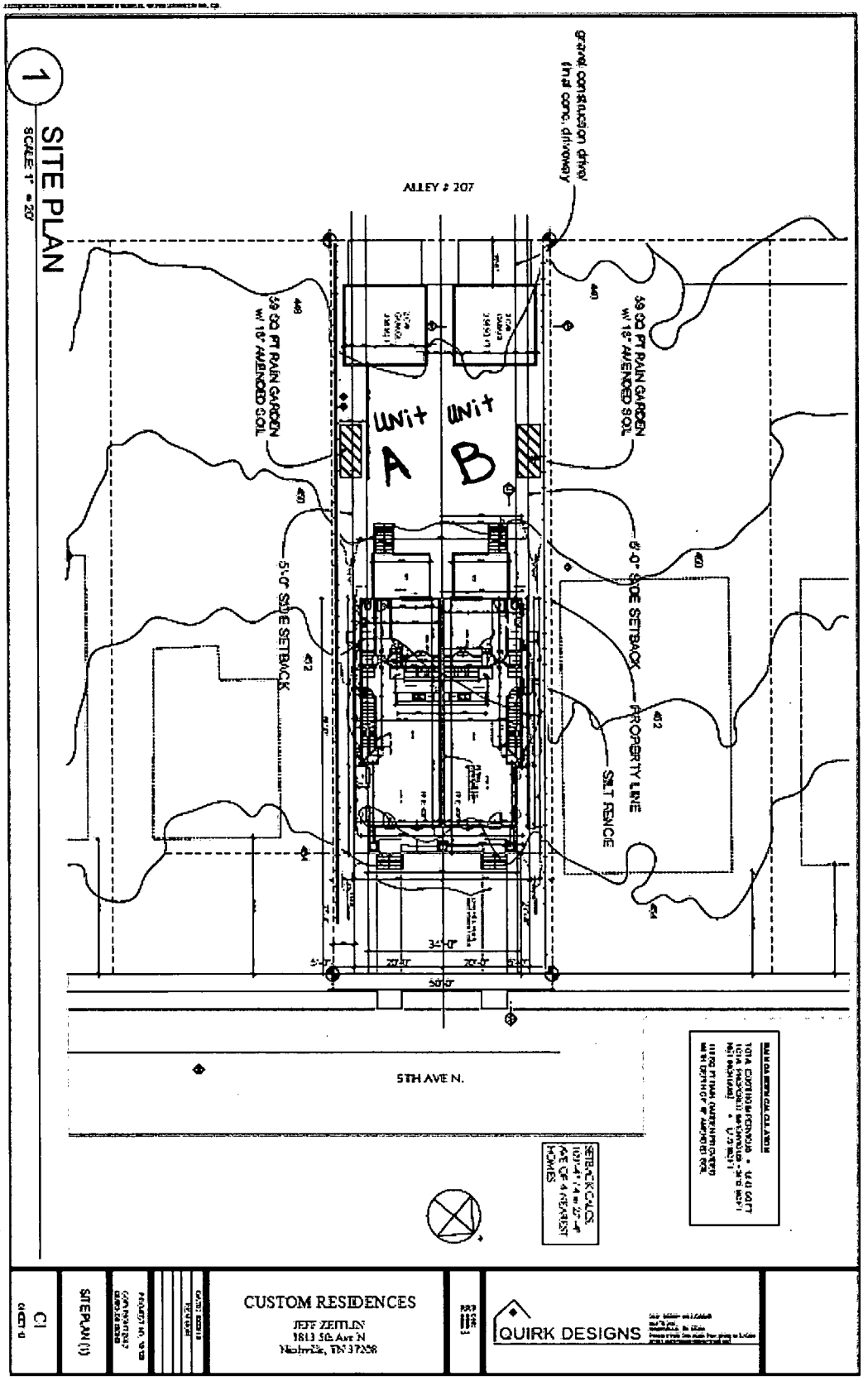

1
SITE PLAN
SCALE: 1" = 20'
ALLEY # 207
gravel construction drive
(final conc. driveway)
59.00 FT RAIN GARDEN
w/ 18" AMENDED SOIL
59.00 FT RAIN GARDEN
w/ 18" AMENDED SOIL
UNit A
UNit B
5'-0" SIDE SETBACK
5'-0" SIDE SETBACK
PROPERTY LINE
SILT FENCE
5TH AVE N.
SETBACK CALCS
CUSTOM RESIDENCES
JEFF ZEITLIN
1813 5th Ave N
QUIRK DESIGNS
SITEPLAN (1)
C1

EXHIBIT "C"

TO THE DECLARATION

FOR

SALEM ON 5TH TOWNHOMES,
A HORIZONTAL PROPERTY REGIME
WITH PRIVATE ELEMENTS

BY-LAWS OF SALEM ON 5TH TOWNHOMES CORPORATION

BY-LAWS

OF

SALEM ON 5TH TOWNHOMES CORPORATION

ARTICLE I

Association of Unit Members

Section 1. Eligibility. The Members of Salem on 5th Townhomes Corporation, a Tennessee not-for-profit corporation, shall consist of the Unit Owners of the Property known as Salem on 5th Townhomes, and located in Nashville, Tennessee (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 2. Succession. 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.

Section 3. Annual Meeting. The annual meeting of the Association (except for the First Annual Meeting, as hereinafter defined) shall be held on the first Tuesday of the second calendar month following the close of the Association's fiscal year. The first annual meeting of the Association (the "First Annual 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 date of the closing of the sale by Developer of the last Unit owned by Developer.

Section 4. Special Meeting. Special meetings may be held at any time upon the call of the President or upon the written demand by the Unit Owners of at least fifty percent (50%) of all the votes entitled to be cast at such a meeting, said written demand to be delivered to the Secretary. Upon receipt of such demand, the Secretary shall send out notices of the meeting to all members of the Association.

Section 5. 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 therefor, shall be given by the Secretary or the person or persons calling the meeting at least twenty (20) days before the date set for such meeting (but no more than sixty (60) days before such meeting). Such notice shall be given to each member in any of the following ways: (a) by any manner permitted under the Restrictions, 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, or (e) if such member cannot be located by reasonable efforts, by posting said notice on the entrance of each Unit. If notice is given pursuant to the provisions of this section, the failure or any member to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings at such meeting.

Section 6. 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 5 of this Article I. Any meeting so held without objection shall, notwithstanding the fact that no notice thereof was given, or that 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, only the presence of the pledgee will be counted in determining whether notice is waived with regard to business dealing with such matters upon which the member's vote is so pledged.

Section 7. Quorum; Voting. At any meeting of the Association, a Majority of the Unit Owners, present or by proxy, shall constitute a quorum, and, except as otherwise provided herein, in the Declaration or in the Act, 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, 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 sale provides otherwise, 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 8. Membership; Voting. Any Person or combination thereof owning any Unit duly recorded in his or its 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 provision 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 persons jointly according to the Record, the vote thereof 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, only the vote of the pledgee will be recognized upon those matters upon which the owner's or owners' vote is so pledge except as otherwise provided in Section 7.

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 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.

ARTICLE II

Board of Directors

Section 1. Number and Qualification. The affairs of the Association shall be governed by a board of directors (the "Board of Directors" or the "Board") composed of three (3)

persons, two (2) of whom shall be Unit Owners (or owners of an interest in a Unit) and one (1) of whom shall be a non-Unit Owner elected in accordance with Section 5 herein.

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 By-Laws directed to be exercised and done by the Unit Owners.

Section 3. Other Powers and Duties. In addition to duties imposed by the Declaration, these By-Laws or by resolutions of the Association, the Board of Directors 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 an agent (hereinafter sometimes called the "Managing Agent") to maintain, repair, replace, administer and operate the Property or any part hereof 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 no more than three (3) years, which term shall be renewable upon approval of the Board of Directors; and provided further, however, that any such management agreement entered into prior to the sale of all the Units by Developer shall be terminable by the Association without cause or penalty on ninety (90) days' prior notice. Notwithstanding the foregoing, any decision to employ the Managing Agent shall require the unanimous approval of the Board.

(d) to formulate policies for the administration, management and operation of the Property and the Common Elements, including the operation of the landscape irrigation system;

(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;

(f) to provide for the surveillance, maintenance, repair, and replacement of the Common Elements and payments therefor, 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 Managing Agent (and any such employees or other personnel who may be the employees of a Managing Agent);

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

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

(j) to fix the estimated 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) to secure insurance policies as required by the Declaration, and in this regard, annually to review the amounts of coverage afforded by such policies.

(l) 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;

(m) to exercise all other powers and duties of Unit Owners as a group referred to in the Act, or in the Declaration or these By-Laws.

The Association shall not, in any event, be bound either directly or indirectly by any contract or lease entered into by the Developer on behalf of the Association (including but not limited to management contracts) unless such contract or lease has a term of one (1) year or less and contains a right of termination, which is exercisable without cause and without penalty at any time after passage of control from the Developer to the Association, upon not more than ninety (90) days' notice.

Section 4. Manager or Managing Agent; Employees Generally. The Managing Agent shall perform such duties and services as the Board of Directors shall authorize, including, but not limited to, the duties listed in Section 3 of this Article. The duties conferred upon the Managing Agent by the Board of Directors may be at any moment revoked, modified or amplified by the vote of the Association in a duly constituted meeting. The Board of Directors and/or the Managing Agent (with the approval of the Board of Directors) may employ any other employees 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 the 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. Effective immediately upon acquisition of fee simple title to a Unit, one person in title to such Unit (or owner of an interest in such Unit) shall be deemed elected as a director, and the preceding Unit Owner of such Unit shall be deemed removed as a director. If a Unit Owner is a trust, then the director shall be a trustee or beneficiary of such trust. If a Unit Owner or such a beneficiary is a corporation or partnership, the director may be an officer, partner or employee of such Unit Owner or beneficiary. If two or more individuals comprise the Unit Owner, they immediately shall advise the Board of which individual among them shall serve as the director for such Unit.

The third non-Unit Owner director shall be elected by mutual agreement of the two Unit Owner directors. If the two Unit Owner directors cannot agree on a third director, then such dispute shall be resolved in accordance with Section 6 of the Declaration. The third non-Unit Owner director shall hold office until his successor is elected by the Unit Owner directors.

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

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 three-fourths (3/4) of the Unit Owners and a successor may then and there be elected to

fill the vacancy thus created. 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. No remuneration shall be paid to a director for services performed by him for the Association in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Directors before the services are undertaken. A director may not be an employee of the Association.

Section 9. Organizational Meeting. The first meeting of a newly elected Board of Directors shall be held within one week 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 two-thirds (2/3) of the directors.

Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the President on three 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 two (2) directors.

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, two-thirds (2/3) of the directors shall constitute a quorum for the transaction of business, and the acts of a 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 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 naming the Association as obligee, which bonds shall be in an amount not less than one hundred fifty percent (150%) of the estimated annual operating expenses of the Property. 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.

ARTICLE III

Officers

Section 1. Designation. The principal officers of the Association shall be a President and a Secretary/Treasurer, both of whom shall be elected by and from the Board of Directors, and both of whom must be Unit Owners. The Directors may appoint an assistant treasurer, an 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 two (2) persons serving as officers; and further provided that no one person shall serve as both President and Secretary simultaneously.

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 or 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. Treasurer. The Treasurer shall have the responsibility for Association funds 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 deposit

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 6. 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 By-Laws, and shall have other powers and duties as may be incidental to the office of Secretary, given him by these By-Laws or assigned to him from time to time by the 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 7. 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.

ARTICLE IV

Assessments

Section 1. Annual Budget. The Board shall cause to be prepared an estimated annual budget for each fiscal year of the Association. 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 fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, and all other common expenses. To the extent that the assessments and other cash income collected from Unit Owners during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account. The annual

budget shall also take into account the estimated net available cash income for the year from the lease, operation or use of the Common Elements. The annual budget shall provide for a reserve for contingencies for the year and replacements, in reasonable amounts as determined by the Board.

Section 2. Assessments. The estimated annual budget for each fiscal year shall be approved by the Board, and copies thereof shall be furnished by the Board to each Unit Owner, not later than thirty (30) days prior to the beginning of such year. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Unit Owner shall pay, as his respective monthly assessment for the common expenses, one-twelfth (1/12) of his proportionate share of the common expenses for such year as shown by the annual budget; provided, however, the Board may, in its discretion, provide for the payment of common expenses on a quarterly or annual basis. The proportionate share for each Unit Owner shall be based upon his respective ownership interest in the Association as set forth in the Declaration. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new monthly assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay each month the amount of his respective monthly assessment as last determined. Each Unit Owner shall pay his monthly assessment on or before the first day of each month to the Managing Agent or otherwise as directed by the Board. No Unit Owner shall be relieved of his obligation to pay any assessment by abandoning or not using his Unit, the Common Elements, or the Limited Common Elements.

Section 3. Partial Year or Month. For the first fiscal year, the annual budget shall be as approved by the First Board. If such first fiscal year, or any succeeding fiscal year, shall be less than a full year, then the monthly assessments for each Unit Owner shall be proportionate to

the number of months and days in such period covered by such budget. Commencing with the date of occupancy of his Unit, each Unit Owner shall pay his assessment for the following month or fraction of a month, which assessment shall be in proportion to his respective ownership interest in the Common Elements and the number of months and days remaining of the period covered by the current annual budget, and which assessment shall be computed by the Board.

Section 4. Annual Report. Within ninety (90) days after the end of each fiscal year covered by an annual budget, or as soon thereafter as practicable, the Board shall cause to be furnished to each Unit Owner a statement for such year, showing the receipts and expenditures and such other information as the Board may deem appropriate.

Section 5. 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 proportionate share of such supplemental budget.

Section 6. Expenditures. Except for the Management Agreement described in Article II, Section 3(c) hereof and expenditures and contracts specifically authorized by the Declaration and By-Laws, the Board shall not approve any expenditure in an amount in excess of ten percent (10%) of the annual budget for the then current year, unless required for emergency repair, protection or operation of the Common Elements or Limited Common Elements, nor enter into

any contract for more than three (3) years, without the prior approval of three-fourths (3/4) of the total ownership in the Common Elements.

Section 7. Lien. It shall be the duty of every Unit Owner to pay his proportionate share of the common expenses as provided in the Declaration, and as assessed in the manner herein provided.

If any Unit Owner shall fail or refuse to make any such payment of assessments 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 rate allowed by applicable law. Such delinquent payment, together with penalty and interest, shall constitute a lien, as provided in the Act, enforceable by the Board, on the interest of such Unit Owner in the Property.

The Association, or its successors and assigns, acting through the Board of 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. The Association, acting through the Board, shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Act, the Declaration, or these By-Laws, or as are otherwise available at law or in equity, for the collection of all unpaid assessments.

Section 8. Records and Statement of Account. The Board shall cause to be kept detailed and accurate records in chronological order of its receipts and expenditures affecting the Common Elements, specifying and itemizing the common expenses incurred. Payment vouchers may be approved in such manner as the Board may determine.

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

Section 9. Discharge of Liens. The Board may cause the Association to discharge any mechanic's lien or other encumbrance which in the opinion of the Board may constitute a lien against the Property or the Common Elements, rather than a lien against only a particular Unit. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorney's fees, incurred by reason of such lien.

Section 10. Holding of Funds. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the percentages of ownership of the Common Elements.

Section 11. Working Capital. A working capital fund shall be maintained by the Association during the initial months of the Property's operation, in an aggregate amount equal to at least two months' assessments for each Unit. 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 Developer, however, shall not be required to make contributions to the working capital fund. The purpose of the working capital fund is to insure that the Association will have cash available to meet

unforeseen expenditures, and/or to acquire additional equipment or services deemed necessary or 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.

Prior to the sale of all Units by the Developer, the Developer shall not use the working capital funds to defray its own expense, or construction costs, or to make up any budget deficits. When, however, unsold Units are sold, the Developer may use funds collected at closing for the working capital fund to reimburse itself for any sums it has paid the Association for unsold Units' shares of such fund.

ARTICLE V

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.

Section 2. Maintenance and Repair.

(a) Every Unit Owner must perform promptly all maintenance and repair work to his Unit 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, sewage, telephone and sanitary installations, lamps and all other accessories belonging to the Unit 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 the Unit Owner's fault, together with a fee equal to twenty percent (20%) of the cost of any such repair or replacement.

Section 3. Use of Units. All units shall be used in accordance with the provisions of the By-Laws, the Declaration and the Rules and Regulations.

Section 4. Leases. All leases or rental agreements for Units shall be in writing and must be specifically subject to the Declaration and By-laws. A copy of every such lease, as and when executed, shall be furnished to the Board. No Unit may be leased or rented for a period of less than six (6) months. The lessee under every such lease shall be bound by and subject to all of the obligations under the Declaration and By-Laws, of Unit Owner making such lease and the lease shall expressly so provide. Any Unit Owner making such lease shall not be relieved thereby from any of said obligations. The Board shall have all the authority in its sole discretion to require at any time that any Unit Owner who is leasing his Unit, place on deposit with the Board such sums as the Board may require and determine to be used as an indemnity against loss or damage to the Common Elements which might be caused by such Unit Owner's lessee. The terms of the indemnity shall be such terms as might be satisfactory to the Board. The Board shall furnish Unit Owner a notice in writing which shall constitute that Unit Owner's notice to make such deposit. In the event Unit Owner fails to comply with the terms of the notice within ten (10) days from the date the notice is mailed to him, the Board at its option may elect to terminate the subject lease. The Board shall give Unit Owner and his lessee notice of such election in writing.

Section 5. Use by Developer. During the period of sale by Developer of any Units, Developer, Developer's agents, employees, contractors and subcontractors, and their respective

agents and employees, shall be entitled to access, ingress to and egress from the Buildings and Property as may be required for the egress for purposes of sale of Units. In addition, Developer reserves the right to enter into, upon, over and under any Unit for a period of one (1) year after the date of sale of the Unit for such purposes as may be reasonably necessary for Developer or its agents to service any Unit. While Developer owns any of the Units and until each Unit sold by it is occupied by Purchasers, 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 herewith.

Section 6. Rules and Regulations. In order to assure the peaceful and orderly use and enjoyment of the Buildings and Common Elements of the Property, the Association may from time to time adopt, modify and revoke in whole or in part by a vote of not less than a Majority of the members at any meeting duly called for the purpose, such reasonable rules and regulations, to be called Rules and Regulations, 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 initial Rules and Regulations shall be these:

1. No exterior of any Unit or the windows or doors thereof or any other portions of the Common Elements shall be painted or decorated by any Unit Owner in any manner without the prior consent of the Board.

2. No furniture, equipment or other personal articles shall be placed in the entrances to the Units other than in enclosed balconies and patios.

3. No Unit Owner shall make or permit any noise or objectionable odor that will disturb or annoy the occupants of any of the Units in the Property or do or permit anything to be done therein that will interfere with the rights, comfort or convenience of other Unit Owners.

4. Each Unit Owner shall keep his Unit in a good state of preservation and cleanliness and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors or windows thereof, any dirt or other substance.

5. All garbage, refuse, and ashes from the Units shall be deposited with care in receptacles intended for such purpose only at such times and in such manner as he Board or the Managing Agent shall direct.

6. All patios and decks shall be maintained neatly and cleanly, and no Unit Owner shall use his patio in a manner so as to disturb the use by other Unit Owners of their patios.

7. Unless otherwise approved by the Board, only caged birds or animals, house cats, and dogs under 80 pounds may be kept in a Unit Owner's Unit unless the same shall become a nuisance or disturbance to other Unit Owners. All Unit Owners shall obey all applicable leash laws, will not allow their pets to run loose at any time, will not leave them tied up outside their Units and shall dispose of his pet's waste so as not to create a nuisance.

8. No radio, television aerial or satellite dish shall be attached to or hung from the exterior of the Units without written approval of the Board.

9. The agents of Managing Agent, and any contractor or workman authorized by Managing Agent, may enter any Unit at any reasonable hour of the day for any purpose permitted under the terms of the Declaration, these By-Laws or the Rules and Regulations.

10. All damage to the Common Elements caused by the moving or carrying of any article therein shall be paid by the Unit Owner responsible for the presence of such article.

11. No Unit Owner shall use or permit to be brought into his Unit any inflammable oils or fluids such as gasoline, kerosene, naphtha or benzine, or other explosives or articles deemed extra hazardous to life, limb or property, without in each case obtaining the written consent of the Board.

12. The Unit Owners must keep the interiors of their Units clean and free from obstructions.

13. Unit Owners shall be held responsible for the actions of their employees, invitees, licensees, visitors, clients, patients or guests.

14. No Unit shall be used or occupied in such manner as to obstruct or interfere with the enjoyment of Occupants, or other residents of adjoining Units; nor shall any nuisances or immoral or illegal activity be committed or permitted to occur in or about any Unit or upon any part of the Common Elements.

Section 7. Remedies. In the event of any violation of the provisions of the Act, the Declaration, these By-Laws or the Rules and Regulations by any Unit Owner (either by his own conduct or by the conduct of any occupant of his Unit), the Association, or its successors or assigns, shall have each and all of the rights and remedies that may be provided for in the Act, the Declaration, these By-Laws and/or the Rules and Regulations, or that may be available at law or in equity.

ARTICLE VI

Amendments

These By-Laws may be amended, modified or revoked in the same manner as the Declaration, PROVIDED, HOWEVER, that the contents of these By-Laws shall always contain those particulars that are required to be contained herein by the Act; and PROVIDED,

FURTHER, that no modifications of or amendment to these By-Laws shall be valid unless set forth in an amendment to the Declaration.

ARTICLE VII

Liability of Officers, Directors and Members;

Indemnification

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. General. To the extent permitted by law, the Association shall indemnify and hold harmless each of its Directors and officers, each member or 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 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 duties as such Director, officer, or committee member.

Section 3. 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 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 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 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 shall ultimately 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 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, 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, or 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 percent 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 the heirs, executors, administrators, successors and assigns of such person or entity.

ARTICLE VIII

Deeds of Trust and Mortgages

Any holder, insurer or guarantor of a deed of trust or mortgage with respect to a Unit may file a copy of such instrument with the Board through the Secretary, or otherwise identify to the Board through the Secretary, or otherwise identify to the Board through the Secretary the name and address of such older, insurer or guarantor and the number or address of the corresponding

Unit, and the Board through the Secretary 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) days, 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.

Any holder of a deed of trust or mortgage with respect to a Unit or any insurer or guarantor of such mortgage or deed of trust may, upon written request to the Board through the Secretary, receive a copy of the Association's financial statement for the immediately preceding fiscal year.

ARTICLE IX

Books and Records

Current copies of the Declaration, these By-Laws, other rules and regulations concerning the Property, and the books, records and financial statements of the Association shall be available for inspection by any Unit Owner or by any holder, guarantor or insurer of any first mortgage or deed of trust covering a Unit at the principal office of the Association. For purposes of this paragraph, "available" shall mean available for inspection, upon request, during normal

business hours. Copies may be purchased by such persons at reasonable cost, to be established from time to time by the Board.

ARTICLE X

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 Salem on 5th Townhomes, of record in the Office of the Register of Davidson County, Tennessee.

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

ARTICLE XI

Conflicts

These By-Laws are set forth to comply with the requirements of the Act, 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 the Act or of the Declaration, the provisions of the Act or of the Declaration, as the case may be, shall control.

EXHIBIT "D"

TO THE DECLARATION

FOR

SALEM ON 5TH TOWNHOMES

Attorney's Opinion

Pursuant to the requirements of Tennessee Code Annotated, Section 66-27-103, the undersigned, George E. Mudter, Jr., an attorney licensed to practice law in the State of Tennessee, hereby declares that, upon the recording of the Declaration to which this certificate is attached, and the Charter of the Salem on 5th Townhomes Corporation, there will be substantial compliance of all legal requirements for the creation of a planned unit development pursuant to the provisions of Tennessee Code Annotated, Section 66-27-101, et seq., known as Salem on 5th Townhomes. The required documents are as follows:

(1) Declaration of Covenants, Conditions and Restrictions for Salem on 5th Townhomes Corporation, a horizontal property regime with private elements;
(2) Site Plan for Salem on 5th Townhomes Corporation showing private and common elements, appended thereto as Exhibit "B"; and
(3) By-Laws of Salem on 5th Townhomes Corporation, appended thereto as Exhibit "C";
(4) Charter of Salem on 5th Townhomes Corporation, recorded or to be recorded in the office of the Secretary of State and to be recorded in the Register's Office for Davidson County, Tennessee.

[Signature Page to Follow]

This opinion is subject to the terms and conditions of the above referenced documents and to all applicable government ordinances and regulations.

This 25th day of January, 2016.

Kelly E. Cox, Attorney at Law

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, the undersigned, a Notary Public in and for said county and state, the within named Kelly E. Cox, Attorney at Law, with whom I am personally acquainted, and who acknowledged that she executed the within instrument for the purposes therein contained.

Witness my hand in Nashville, Tennessee, this 25th day of January, 2016.

Notary Public
My commission expires _____

