Bill Garrett Davidson County
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THIS INSTRUMENT PREPARED BY:
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR 2078 Whitney Avenue Townhomes, A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

THIS DECLARATION is made and entered into by **Rob Cushman, Authorized Representative of The MC2 Group, Inc., a Tennessee corporation**, hereinafter referred to as the "Developer".

WITNESSETH:

WHEREAS, the Developer is the record owner and holder 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 hereto (hereinafter referred hereto as the "Property"); and,

WHEREAS, the Developer desires to submit the Property described on Exhibit "A" together with all buildings, structures, improvements, and other permanent fixtures of whatever kind thereon, and all rights and privileges belonging or in anyway pertaining thereto, to the provisions of the Horizontal Property Act of the State of Tennessee as the same may be amended from time to time for the express purpose of establishing thereon a horizontal property regime to be known as **2078 Whitney Avenue 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 Properly.

NOW, THEREFORE, the Developer declares as follows:

1. **Definitions.** As used herein, unless the context otherwise requires:
   (a) "Act" means the Horizontal Property Act of the State of Tennessee, Tennessee Code Annotated, Section 66-27-101, et seq., as the same may be amended from time to time.

(b) "Association" means **2078 Whitney Avenue Townhomes Corporation**, a Tennessee not-for-profit corporation.

(c) "Board" means the Board of Directors of **2078 Whitney Avenue Townhomes Corporation**, a Tennessee not-for-profit corporation.

(d) "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.

(e) "By-Laws" mean the By-Laws of the **2078 Whitney Avenue 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.

(f) "Common Elements" shall mean those portions of the Common Elements designated to be vested in the Association.

(g) "Limited Common Elements" shall mean those portions of the Limited Common Elements designated herein for the exclusive use of the one (1) Unit to which it is assigned.

(h) "Private Elements" shall mean and include the lot area upon which the Unit is located. Exclusive ownership in fee simple and use of the Private Elements for each Unit is reserved to such Unit. The area of the Private Elements for each Unit is shown on the Plat. Lots, as referenced on the plat, shall be deemed to refer to the Private Elements.

(j) "Majority" or "majority of the Unit Owners" mean at least fifty-one (51%) percent of the Owners of the Units.

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

(1) "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) "Plat" means the Plat, Plats of survey or site plans of the Parcel or Parcels submitted to the provisions of the Act showing the 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".

(p) "Property" means all the land, property and space comprising the Parcel as defined in Item (m) 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.

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

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

(s) "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 residence and improvements now and hereafter located hereon. The Units are identified by a number or alphabetic letter (or combination thereof) on the Plat and may be held and conveyed by reference to such number or letter. Conveyance of a Unit shall automatically convey the undivided membership of each Unit Owner in the Association. Any Unit may be jointly or commonly owned in any state 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.

(t) "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 Limited 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 Property to the Act.** The Developer does hereby submit and subject the Property as shown on the attached plat to the provisions of the Horizontal Property Act of the State of Tennessee as amended from time to time and does hereby establish a Horizontal Property Regime to be known as **2078 Whitney Avenue Townhomes**.

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

5. **(a) Association of Unit Owners and Administration and Operation of the Property.** There has

been formed an Association having the name **2078 Whitney Avenue 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 the 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 determined by the Board, and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and 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/she ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be divided among the respective Unit Owners with one (1) vote granted to each Unit (except that the Developer shall have three (3) votes per Unit as provided below).

(b) Voting Membership

The members shall be the Unit Owners and shall be entitled to one (1) vote for each unit owned. When more than one person holds any interest in any unit, all such person 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 cast with respect to any unit.

(c) Management of the Property. 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, subject to the provisions of subparagraph (d) below. 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) Initial Management Contract. First Board, appointed as provided herein, shall ratify and approve the Management Agreement between the Developer (if applicable) on behalf of the Association, and a management corporation, to act as Managing Agent for the Property, for a term as approved by the First Board, but not to exceed one year.

(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.

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 By-Laws, the determination thereof by the Board shall be final and binding on all Unit Owners.
7. **Ownership of the Common Elements.** Ownership of the Common Elements shall be vested in the Association.
8. **Use of the Limited Common Elements.** Each Unit Owner shall have the right to use the Limited Common Elements appurtenant to each Unit and designated on the Plat, if applicable, 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 Limited Common Elements shall extend not only to each Unit Owner, but also to his agent, servants, tenants, family members, customers, invitees, and licenses. However, each Unit Owner shall have the right to the exclusive use and possession of the Private Elements and Limited Common Elements, and shall be used by each respective Unit Owner, and shall be used by such Unit Owner(s) subject to the Rules and Regulations of the Association.
9. **Storage Areas and Parking Spaces. N/A**
10. **(a) Common Expenses and Enforcement.** Except as specifically provided otherwise herein, each Unit Owner shall pay an equal share of the expenses of the administration and operation of the Limited Common Elements and of any other expenses incurred in conformance with these Declarations and Bylaws (which expenses are herein sometimes referred to as "common expenses"), including, but not limited to, the maintenance and repair thereof and any and all replacements and additions thereto. Payment of common expenses, including any prepayment thereof required by any contract for a sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. No Unit Owner shall be exempt from payment of such Unit Owner's proportionate share of the common expenses by waiver or non-use of enjoyment of the Limited Common Elements, or by abandonment of such Owner's Unit. If any Unit Owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof, together with interest thereon at the rate of Ten percent (10%)

per annum, after said common expenses become due and payable, shall constitute a lien on the interest of such Unit Owner in the Unit as provided in the Act. Each assessment for common expenses against a Unit shall also be the personal obligation of the Unit Owner at the time the assessment is due. A successor in title to a Unit shall not be personally obligated to pay any unpaid assessments for common expenses which have been levied against a Unit unless such successor in title expressly assumes the payment of the same, provided, however, any lien encumbering a Unit as above described shall not be affected by transfer of a Unit.

The Developer shall not be required to expend from its own funds any sums of money for maintenance, improvements, or any other expenses of the administration of the Limited Common Elements, and no Unit owned by the Developer shall be assessed for common expenses, or otherwise, until such time as construction of such Unit is completed and occupied by a tenant of Developer, or is sold by the Developer. This paragraph of Section 10(a) may not be modified or amended without the unanimous written consent of all Unit Owners.

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

(c) **Deed of Trust Protection.** The lien for common expenses payable by a Unit Owner shall be subordinate to the lien of a recorded 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 beneficiary thereunder either takes possession of the Unit encumbered thereby, accepts a conveyance of any interest therein (other than as security) or forecloses on its deed of trust. This Subsection (c) shall not be amended, changed, modified or rescinded without the prior written consent of all deed of trust beneficiaries of record.

(d) **Special Assessments.** In addition to the annual assessments for common expenses authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Limited Common Elements, including fixtures and personal property related thereto,

provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Unit Owners.

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 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 Private Elements and its corresponding interest in the Association, as provided in the Act. In the event that such taxes for any year are not separately taxed to each Unit Owner by the property assessor, but rather are taxed on the property as a whole, then each Unit Owner shall pay its proportionate share thereof in accordance with such unit owners respective percentage of ownership interest *in* the Association, and, *in* said event, such taxes shall be deemed a common expense.

13. **Insurance, Damage and Reconstruction.** The Board may obtain insurance for the Property and the 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 Property and the Limited 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 Property and Limited 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 Property and Limited Common Elements, 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; however, premiums for such insurance shall be separately billed equally to Unit Owners.

In the event of damage to or destruction of any of the Property or Limited 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 the Property and Limited 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. Notwithstanding the above, unless the Board does carry hazard insurance on the Property and Limited Common Elements, 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 common expenses; however, premiums for such insurance may be separately billed equally to each Unit Owner if the Board so desires.

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.

In the event the Board does not maintain insurance on the Units and the Private Elements, each Unit Owner shall be responsible for obtaining hazard insurance which includes liability coverage on his Unit, contents of his Unit and Private Elements, 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. **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 its Private Elements and Limited Common Elements.

If, due to the act or neglect of a Unit Owner, or of his agent, servant, tenant, family member, invitee, licensee or household pet, damage shall be caused to the Private Elements owned by others, or if general maintenance of utility lines, etc. are required and such repair or damage is on another unit owner's private elements or Limited Common Elements, then the Unit Owner which caused the damage or

required the repair on the other parties private elements or limited common elements shall pay for such damage, maintenance, repairs and/or replacements.

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

15. **Alterations, Additions or Improvements and Architectural Control.** Any Unit Owner may make alterations, additions or improvements within his Unit, Private Elements and Limited Common Elements without the prior written approval of the Board, but such Unit Owner shall be responsible for any damage to other Units, the General Limited Common Elements, if any, Limited Common Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements.
16. **Decorating.** N/A
17. **Encroachments.** N/A
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.
19. **Remedies.** N/A
20. **Amendments.**

    (a) Amendments Annexing Additional Phases. N/A

    (b) Other Amendments. The provisions of this Declaration may be amended by an instrument in writing, setting forth such amendment, signed by both Unit Owners; provided, however, that all lien holders of 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.

    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, when 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 Grantee of Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration. All future Unit Owners and Occupants shall be subject to and shall comply with the provisions of 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 from 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 Limited 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 approve the repair and restoration of such Limited Common Elements, the Board shall arrange for the repair and restoration of such Limited 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 Limited 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 Limited Common Elements.

24. **Rights Reserved.** N/A

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 condominiums, if applicable, are hereby incorporated as terms and conditions of this Declaration and By-Laws and such shall be governing upon the Property, Developer, and the Association, so long as such terms or conditions are not inconsistent with the laws of the State of Tennessee as found in T.C.A., Section 66-27-101, et seq., as amended.

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

(a) A first mortgagee of a Unit at his request is entitled to written notification from the Association of any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under this Declaration, By-Laws, or any of the 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 real location of such assessments or charges to all Units including the mortgaged Unit).

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

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

(ii) Use hazard insurance proceeds for losses to the Limited 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 Limited Common Elements.

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

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

(f) 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.

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

(h) Any agreement for professional management of the property, whether it be by Owner, his/her successors and assigns, or any other person or entity, may be terminated on ninety (90) days' written notice, and the terms of any such contract shall so provide and shall not be of a duration in excess of three (3) years.

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

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

(k) Notwithstanding the above, any first mortgagee shall have all of the rights granted to a first

mortgagee herein, and in addition shall have all of the rights granted to an institutional first mortgagee under its deed of trust, and under the laws of the State of Tennessee.

26. **Trustee as Unit Owner.** In the event title to any Unit is conveyed to a land title-holding trust, under the terms of which all powers of management, operation, and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder shall be considered Unit Owners for all purposes and they shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this declaration against such Unit. No claim shall be made against any such title-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. **Notices.** Notices provided for in the Act, Declaration or By-Laws shall be in writing and shall be addressed to the Association, at **2078 Whitney Avenue, Nashville, TN 37221** or at such other address as hereinafter provided. 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 be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose Unit is subject to such mortgage or trust deed.

28. **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.

29. **Party Walls.** N/A

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.

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

IN WITNESS WHEREOF, the undersigned has executed this Declaration on 10/27/17.

THE MC2 GROUP, INC.,
A Tennessee corporation

By: _____
Rob Cushman
Its: Authorized Representative

STATE OF TENNESSEE **COUNTY OF DAVIDSON**

Before me, the undersigned authority, a Notary Public of the State and county mentioned, personally appeared **Rob Cushman**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the **Authorized Representative** (or other officer authorized to execute the instrument) of **The MC2 Group, Inc.**, the within named bargainor, a **Tennessee corporation**, and that such officer, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the **corporation** as **Authorized Representative** (or other authorized officer).

Witness my hand, at office, this 27th day of October, 2017.

_____
Notary Public

TREY CAIN
STATE OF TENNESSEE
NOTARY PUBLIC
WILLIAMSON CO.

My commission expires: 9/5/2021

EXHIBIT A

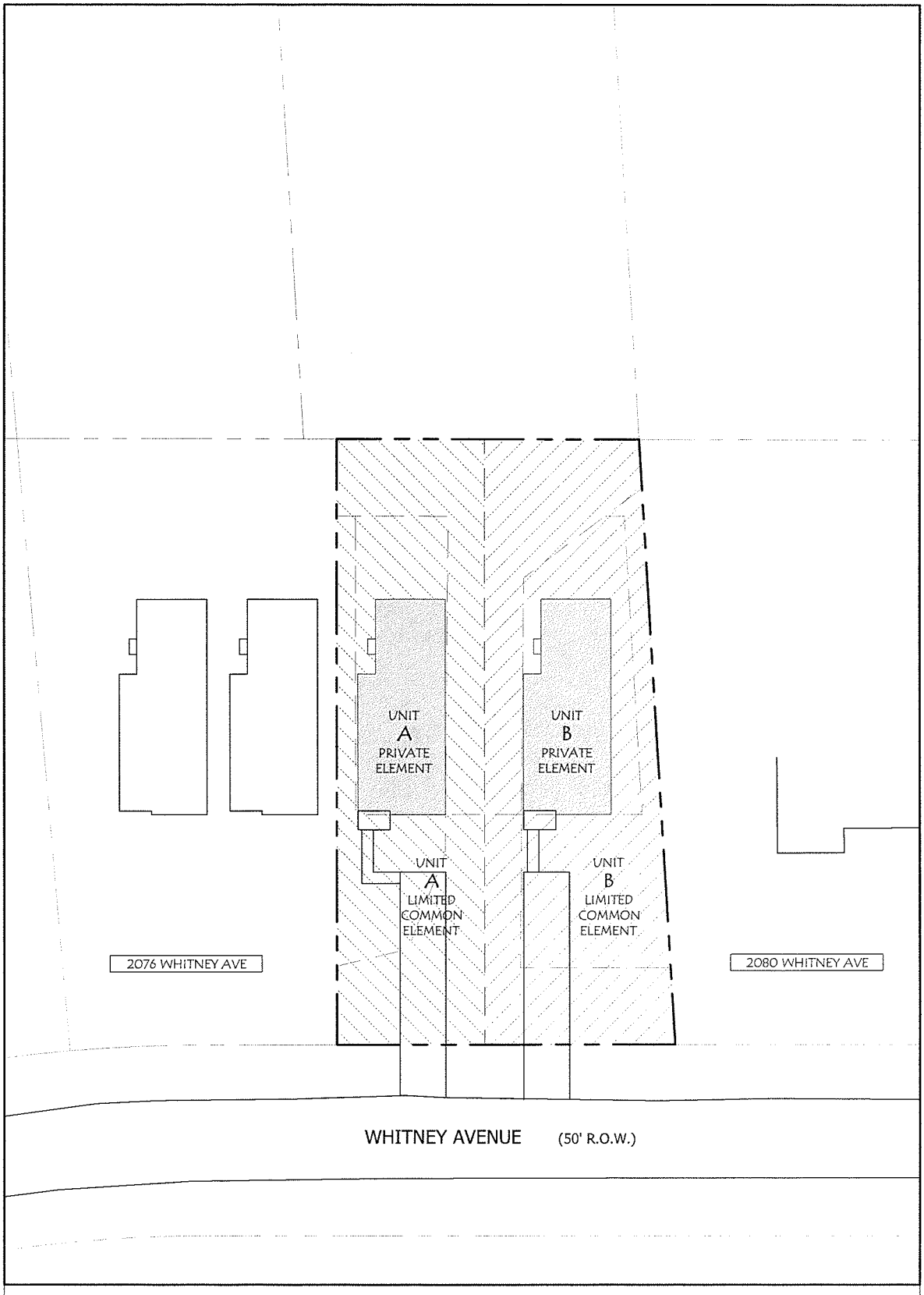
Land in Davidson County, Tennessee, being Lot No. 78B on the Final Plat of Re-Subdivision of Lot 78 Woodycrest Section One of record in Instrument No. 20171013-0105217, in the Register's Office for Davidson County, Tennessee, to which Plan reference is hereby made for a more complete description of the property.

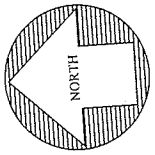
Being part of the same property conveyed to Barbara Cloyd, unmarried by Warranty deed from Ronald Wayne Martin, Sr., Richard Keith Martin, Jon Scott Martin, Collin Terry Martin and Teri Dillon Martin of record in Book 10937, page 905, Register's Office for Davidson County, Tennessee, dated May 7, 1998 and recorded on May 19, 1998.

Being part of the same property conveyed to New Day Homes, LLC and Scott Lynch, married by Warranty deed from Barbara Cloyd, unmarried of record in Instrument No. 20160902-0092558 Register's Office for Davidson County, Tennessee.

Being part of the same property conveyed to The MC2 Group, Inc., a Tennessee corporation by deed from New Day Homes, LLC and Scott Lynch of record as Instrument Number _____, Register's Office for Davidson County, Tennessee.

Being also known as 2078 Whitney Avenue Nashville, Tennessee 37210.





GRAPHIC SCALE (IN FEET)

30 0 15 30 60

1 inch = 30 ft.

EXHIBIT 'B' - Units A&B

2078 WHITNEY AVE

NASHVILLE, TENNESSEE 37210 Lot 78B

Davidson County, Council District 17

Zoning: R6 Metro Parcel ID: (10613023300) Date: 10/20/17

201710300111225

EXHIBIT C

BY-LAWS OF
2078 Whitney Avenue Townhomes Corporation

ARTICLE I
Members (Unit Owners)

Section 1. Eligibility. The members of **2078 Whitney Avenue Townhomes Corporation**, a Tennessee not-for-profit corporation, shall consist of the Unit Owners of the property know as **2078 Whitney Avenue Townhomes** located at Nashville, Davidson County, 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. Secession. The membership of each Unit Owner shall terminate when he or she ceases to be a Unit Owner, and upon the sale, transfer, or other disposition of his ownership interest in the property, his or her membership in the Association shall automatically be transferred to the new Unit Owner succeeding to such ownership interest.

Section 3. Regular Meetings. The first regular meeting of the Unit Owners (the "First Meeting") may be held, subject to the terms hereof on any date, at the option of the Board. All such meetings of Unit Owners shall be held at such place in Davidson County, Tennessee, and at such time as specified in the written notice of such meeting which shall be delivered to all Unit Owners at least ten (10) days prior to the date of such meeting.

Section 4. Special Meetings. Special meeting of Unit Owners may be called by a majority of the Unit Owner. Special meetings shall be called by delivering written notice to all Unit Owners not less than ten (10) days prior to the date of the meeting, stating the date, time and place of the special meeting and the matters to be considered.

Section 5. Delivery of Notice of Meetings. Notices of meetings shall be delivered either personally or by mail to Unit Owners at the addresses given to the Board by Unit Owners for such purpose, or to a Unit Owner's unit if no separate address for such purpose has been given to the Board.

Section 6. Voting . Each Unit shall have one (1) vote. If any Unit Owner consists of more than one (1) person, the voting rights of such Unit Owner shall not be divided, but shall be exercised as if the Unit Owner consisted of only one (1) person in accordance with the proxy or other designation made by the persons constituting such Unit Owner.

Section 7. Quorum. A quorum of Unit Owners for any meeting shall be constituted by Unit Owners represented in person or by proxy and holding a majority of the votes entitled to be case at such meeting.

ARTICLE 11
Board of Directors

Section 1. Number, Election and Term of Office. The Board of Directors of the Association (referred to in the Horizontal Property Act of the State of Tennessee as the "board of administrators" and sometimes referred to herein as the "Board") shall consist of two (2) members (hereinafter referred to as "Directors").

Section 2. **Qualification.** The Directors shall consist of each Unit Owner or spouse of each Unit Owner. Should any Unit Owner Director transfer title to his or her Unit, the respective successor Unit Owner shall assume the transferor's position as Director. If a Director shall cease to meet such qualifications during his or her term, he shall thereupon cease to be a Director and his or her place on the Board shall be deemed vacant.

Section 3. Vacancies. Any vacancy occurring in the board shall be filled by majority vote of the remaining members thereof. Any Director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the Director whom he succeeds.

Section 4. Meetings. A regular annual meeting of the Board shall be held following the regular annual meeting of Unit Owners, Special meetings of the Board shall be held upon call by the President or by a majority of the Board on not less than forty-eight (48) hours' notice in writing to each Director, delivered personally or by mail or telegram. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Board without a meeting. A Directors attendance at a meeting shall constitute his or her waiver of notice of said meeting.

Section 5. Removal. Any non-Unit Owner Director may be removed from office with or without cause by the vote of a majority of the Unit Owners.

Section 6. Compensation. Directors shall receive no compensation for their services as Directors, unless expressly provided for in resolutions duly adopted by Unit Owners.

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

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

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

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 thereof for all Unit Owners, upon such terms and for such compensation and with such authority as the Board may approve;

d) To formulate policies for the administration, management and operation of the property and the Limited Common Elements;

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 Limited Common Elements, and to amend such rules and regulations from time to time and to establish reasonable financial assessments for infractions thereof;

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

g) To provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management, and operation of the property and the Limited 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 borrow money for the purpose of repair or restoration of Limited Common Elements without the approval of the members of the Association;

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

m) 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;

n) To be responsible for and maintain all streets, roads, utilities, and any other services of a public nature that are classified as Limited Common Elements in the Declaration.

o) To exercise all other powers and duties of Unit Owners as a group referred to in the Horizontal Property Act of the State of Tennessee or in the Declaration or these By-Laws.

Section 9. Power to Take Any Action. Whenever in these By-Laws the Association is given the power to take any action, it is the intention of these By-Laws that the Board shall act for the Association in all cases, except and to the extent that it is expressly provided that action be taken upon vote of the Unit Owners.

Section 10. Non-Delegation. Nothing in these By-Laws shall be considered to grant to the Board, the Association, or to the officers of the Association, any powers or duties which, by law, have been delegated to Unit Owners.

ARTICLE III
Officers

Section 1. Designation. At each regular annual meeting of the Board, the Directors present at such meeting shall elect the following officers of the Association by a majority vote:

a) A President, who shall be a Director, who shall preside over meetings of the Board and of Unit Owners, and who shall be the chief executive officer of the Association;
b) A Secretary/Treasurer, who shall keep the minutes of all meetings of the Board and of Unit Owners, financial records, and who shall, in general, perform all the duties incident to the office of Secretary/Treasurer;
c) Such additional officers as the Board shall see fit to elect.

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

Section 3. Term of Office. Each officer shall hold office for the term of one (I) year and until his or her successor shall have been appointed or elected and qualified.

Section 4. Vacancies. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of said Board. Any Director so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by vote of two-thirds (2/3) of the total membership of the Board at a special meeting thereof.

Section 5. Compensation. The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by Unit Owners.

ARTICLE IV

Assessments

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

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

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

The Association, acting through the Board or its agents, shall have the right to maintain a suit to foreclose any such lien, and there shall be added to the amount due the costs of said suit and other fees and expenses, together with legal interest and reasonable attorney's fees to be fixed by the court. Furthermore, if any Unit Owner shall fail or refuse to pay when due his or her proportionate share of the expenses, the Association, acting through its Board, shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Horizontal Property Act, the Declaration, or these By-Laws, or as are otherwise available at law or in equity, for the collection of all unpaid assessments.

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

Section 4. Discharge of Liens. The Board may cause the Association to discharge any mechanic's lien or other encumbrances which in the opinion of the Board may constitute a lien against the property or the Limited Common Elements, rather than a lien against only a particular Unit. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorney's fees, incurred by reason of such lien.

ARTICLE V
Use and Occupancy Restrictions

Section 1. General. Each Unit Owner shall maintain such Owner's Unit in good condition and in good order and repair, at such Owner's expense.

Section 2. Animals. N/A

Section 3. Trash. N/A

Section 4. Use by Developer. N/A

Section 5. Storage. Permanent storage of boats, trailers, campers, and motor homes on the Property shall not be permitted in the front of the units.

Section 6. Wiring. N/A

Section 7. Architectural Control. N/A

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

Section 9. Landscaping. N/A

Section 10 Fencing. N/A

Section 11. Parking. N/A

Section 12. Rules and Regulations. N/A

ARTICLE V[

Contractual Powers

N/A

ARTICLE VII

Amendments

These By-Laws may be amended or modified from time to time by action or approval of all of the Unit Owners. Such amendments shall be recorded in the Office of the Register's Office of Davidson County, Tennessee.

ARTICLE VIII

Indemnification

Section I. General. To the extent permitted by law, the Association shall indemnify and hold harmless each of its Directors and officers, each member of any committee appointed pursuant to these By-Laws, against all contractual and other liabilities to others arising out of contracts made by, or other acts of such Directors, officers, or committee members on behalf of Unit Owners, or arising out of their status as Directors, officers, or committee members, unless any such contract or act shall have been made fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit, or proceeding, whether civil, criminal, administrative or otherwise, in which any such Director, officer or committee member may be involved by virtue of such person's being or having been such Director, officer, or committee member, provided, however, that such indemnity shall not be operative with respect to (l) 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 or her 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 or her duties as such Director, officer or committee member.

Section 2. Success on Merits. To the extent that a member of the board, or an officer of the Association, or a member of any committee appointed pursuant to these By-Laws has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonable incurred by him in connection therewith.

Section 3. Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the persons or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article VIII.

Section 4. Miscellaneous. N/A

ARTICLE IX
Mortgages

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

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

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

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

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

ARTICLE 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 **2078 Whitney Avenue Townhomes**, of record in the Office of the Register of Deeds for Davidson County, Tennessee.

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

ARTICLE XI
Conflicts

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

EXHIBIT D

TO

2078 Whitney Avenue Townhomes

A HORIZONTAL PROPERTY REGIME

WITH PRIVATE ELEMENTS

ATTORNEY'S CERTIFICATE

This document is intended to serve as the attorney's opinion which is required under the terms of Tennessee Code Annotated, Section 66-27-103. The undersigned, **Trey Cain**, an attorney licensed to practice law in the State of Tennessee, hereby declares that all improvements shall be constructed in substantial compliance with local building codes and that upon proper recording of this certificate and the following additional documents, all legal requirements for the creation of a Planned Unit Development under the terms of the Tennessee Horizontal Property Act, Tennessee Code Annotated, Section 66-27-103(b) et. seq. will have been met:

1) The Declaration of Covenants, Conditions and Restrictions for **2078 Whitney Avenue Townhomes**, a Horizontal Property Regime with Private Elements.
2) By-Laws of **2078 Whitney Avenue Townhomes Corporation** (a townhouse corporation).
3) The plat for **2078 Whitney Avenue Townhomes**, a Horizontal Property Regime, which plat shows private elements.
4) The Charter of **2078 Whitney Avenue Townhomes Corporation** (a townhouse corporation).

Witness my hand this **October 26, 2017**.

Trey Cain

True Copy Certification

I, Jonathan Triston Jacobs, do hereby make oath that I am a licensed attorney and/or the custodian of the electronic version of the attached document tendered for registration herewith and that this is a true and correct copy of the original document executed and authenticated according to law.

Signature

State of TN

County of Williamson

Personally appeared before me, Annette Belyea, a notary public for this county and state, [Jonathan Triston Jacobs] who acknowledges that this certification of an electronic document is true and correct and whose signature I have witnessed.

Annette Belyea
Notary's Signature

My Commission Expires: 9-19-18
Notary' Seal (if on paper)

ANNETTE BELYEA
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF WILLIAMSON

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