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# DECLARATION OF COVENANTS, CONDTIONS AND RESTRICTIONS FOR THE HOMES AT 1716 A & B MCKINNEY AVENUE HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

THIS DECLARATION is made and entered into by P & P Development, LLC, a Tennessee limited liability company (hereinafter referred to as the "Developer").

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

WHEREAS, the Developer is the developer 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 any way 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 The Homes at 1716 A & B McKinney Avenue; 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 The Homes at 1716 A & B McKinney Avenue HOA, Inc., 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 The Homes at 1716 A & B McKinney Avenue HOA, Inc., 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 Homes at 1716 A & B McKinney Avenue HOA, Inc., 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 P & P Development, LLC, a Tennessee limited liability company.

(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) "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".

(p) "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.

(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 herein 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, and its respective Private Elements. 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 The Homes at 1716 A & B McKinney Avenue.

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 The Homes at 1716 A & B McKinney Avenue HOA, Inc., 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. Unit Owners 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.

(c) Management of the Property. The Board shall have the authority to engage the services of an agent ("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) Non-Liability of the Directors, Board, Officer and Developer. To the extent permitted by law, neither the directors nor officers of the Association, nor the Developer or its members, 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, and shall likewise indemnify and hold harmless the Developer and its members.

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 the Common Elements.** Ownership of the Common Elements shall be vested in the Association.

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. Parking areas and/or driveways shall be Common Elements and Limited Common Elements as designated on the Site Plan.

10.

(a) **Common Expenses and Enforcement.** Each Unit Owner shall be responsible for paying its 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. Such proportionate share

of the common expenses for each Unit Owners shall 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.

(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.

(c) **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

11. **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

12. **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. If the Board does not obtain insurance for the Common Elements and/or Limited Common Elements, the Unit Owners shall, in proportion to the Unit Owners' respective percentages of ownership in the Common Elements and/or Limited Common Elements, shall procure insurance 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/or Limited Common Elements.

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 may 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.

13. **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 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.

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.

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, Limited Common Elements, 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. Reasonable notice to access the adjoining Unit's Private Elements shall be given to the affected Unit Owner unless access is required due to emergency circumstances.

The authorized representatives of the Association, Board, or of the 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.

14. **Alterations, Additions or Improvements.** Except as otherwise provided 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.

15. **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.

16. **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.

17. **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. Further, Developer and its contractors, subcontractors, agents, and assigns shall have unrestricted and free access, ingress to, and egress from the Common Elements for the purpose of performing any construction or remodeling on any Unit for which Developer has an ownership or other monetary interest.

18. **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, 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.

19. **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 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.

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.

20. **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.

21. **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.

22. **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.

23. **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.

(d) The right of the Developer, its successor and assigns, at any time when Developer has an ownership or monetary interest in any Unit, to grant such easements and rights-of- way to such utility companies or public agencies or authorities it shall deem necessary for the proper construction, installation, servicing, and maintenance of the Common Elements, Limited Common Elements, and the Units.

24. **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; or

(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.

25. **Trustee as Unit Owner.** In the event title to any Unit is conveyed to a land title-holding trust, under the terms of which all powers of management, operation, and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the 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.

26. **Notices.** Notices provided for in the Act, Declaration or By-Laws shall be in writing and shall be addressed to the Association, at its address as designated on the Secretary of State's website, 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.

27. **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.

28. **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.

29. **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 to Follow]

**IN WITNESS WHEREOF**, the Developer has executed this Declaration on this 28th day of June, 2018.

**DEVELOPER:**

P&P DEVELOPMENT, LLC

By: _____
Paul Riggan, Managing Member

STATE OF TENNESSEE )

COUNTY OF DAVIDSON )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared **Paul Riggan**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged such person to be the Managing Member of P&P DEVELOPMENT, the within named bargainor, a Tennessee limited liability company and that such person, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by such person as President.

Witness my hand, at office, this 28th day of June, 2018.

_____
Notary Public
My Commission Expires: 11/3/2020

BRADLEY T. BALD
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 11-03-2020

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201806290063372

EXHIBIT "A"

TO THE DECLARATION FOR
THE HOMES AT 1716 A & B MCKINNEY AVENUE
A HORIZONTAL PROPERTY REGIME
WITH PRIVATE ELEMENTS

LEGAL DESCRIPTION

**Land in Davidson County, Tennessee, being Lot No. 60 on the Plan of Buena Vista Heights Addition of record in Book 161, Page 19, 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 the same property conveyed to Gatna, LLC by Quitclaim Deed from Alvin C. Juma, a married man of record in Instrument No. 20110107-0002103 Register's Office for Davidson County, Tennessee, dated December 30, 2010 and recorded on January 07, 2011. (Value of consideration shown in aforementioned deed $0.00).**

**Being a portion of the same property conveyed to Josh Hellmer, married and Charles McTorry, married by Warranty Deed from Gatna, LLC, a Tennessee limited liability company of record in Instrument No. 20180328-0028908 Register's Office for Davidson County, Tennessee, dated March 16, 2018 and recorded on March 28, 2018. (Value or consideration as shown in aforementioned deed $412,000.00).**

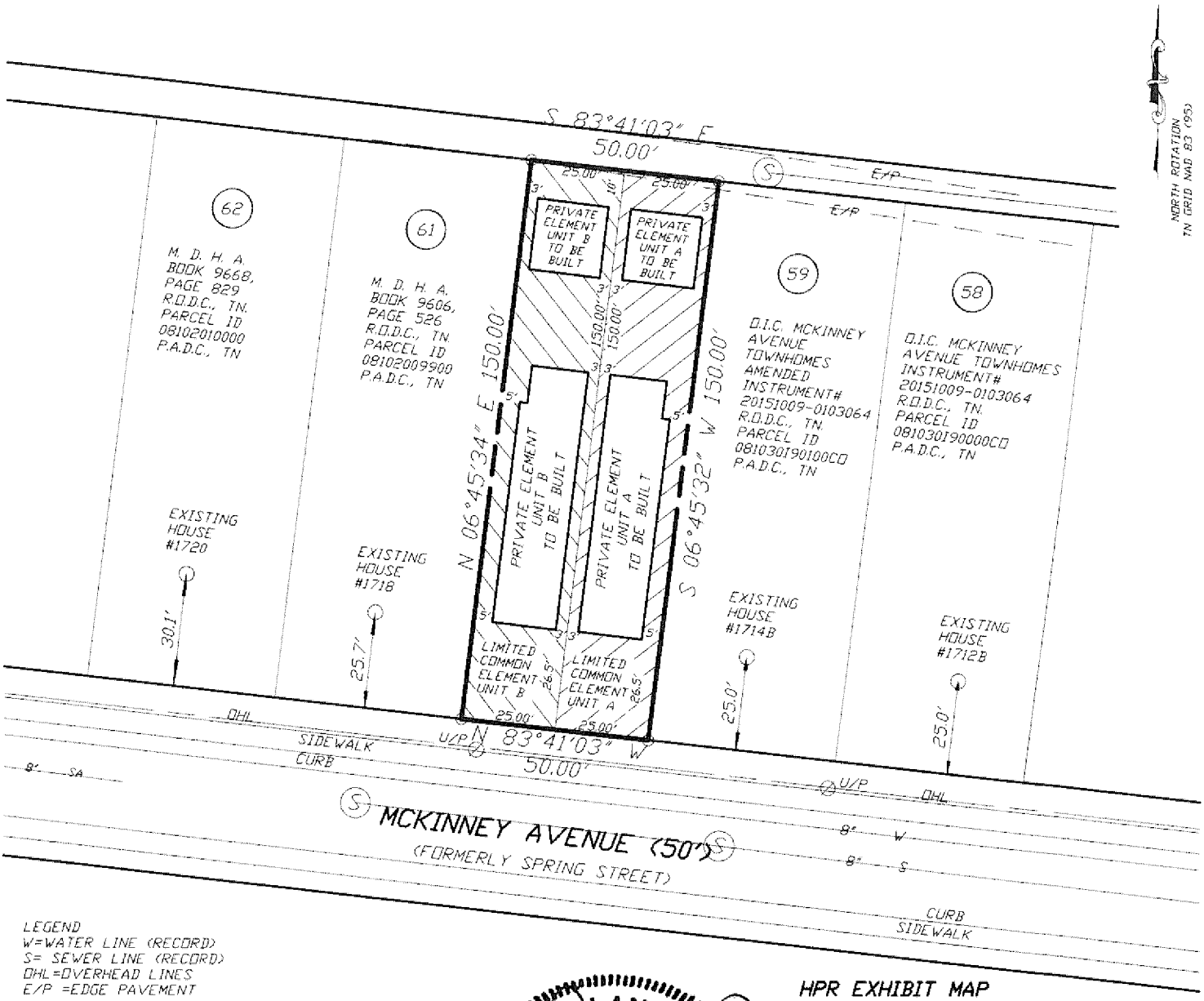
**Being the same property conveyed to Anchored Developments, LLC, a Tennessee limited liability company by Warranty Deed from Josh Hellmer and Charles McTorry of record in Instrument No. 20180412-0034630 Register's Office for Davidson County, Tennessee, dated March 30, 2018 and recorded on April 12, 2018.**

This is improved property known as **1716 McKinney Avenue, Nashville TN 37208**

EXHIBIT "B"

TO THE DECLARATION FOR
THE HOMES AT 1716 A & B MCKINNEY AVENUE,
A HORIZONTAL PROPERTY REGIME
WITH PRIVATE ELEMENTS

(Plat)




LEGEND
W=WATER LINE (RECORD)
S= SEWER LINE (RECORD)
OHL=OVERHEAD LINES
E/P =EDGE PAVEMENT

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

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

JOHN ALAN HOOD
REGISTERED LAND SURVEYOR
XVI
AGRICULTURE
COMMERCE
TENNESSEE NO. 1838

**HPR EXHIBIT MAP**
LOT 60, BUENA VISTA HEIGHTS ADDITION, BOOK 161, PAGE 19 R.O.D.C., TN.
**PROPERTY LOCATED** IN THE 2ND COUNCIL DISTRICT OF NASHVILLE, DAVIDSON COUNTY TENNESSEE ON THE NORTHERLY MARGIN OF MCKINNEY AVENUE, WEST OF 18TH AVENUE NORTH
**PROPERTY ADDRESS:**
1716 A & B MCKINNEY AVENUE, NASHVILLE, TN, 37208
**DEED REFERENCE:**
INSTRUMENT # 20180412-0034630 R.O.D.C., TN.
**ORIGINAL PARCEL ID:**
08102009800 P.A.D.C., TN.
DATE: 5-2-2018
SCALE: 1"=40'
**PREPARED FOR:**
IRON DEVELOPMENT

PREPARED BY:
CAMPBELL, McRAE & ASSOCIATES, SURVEYING, INC.
P.O. BOX 41153
NASHVILLE, TN., 37204
PH. 615-298-2424
EMAIL cmas@att.net

I HEREBY CERTIFY THAT THIS IS A CATEGORY I SURVEY WITH THE RATIO OF PRECISION OF THE UNADJUSTED SURVEY BEING 1: 28,000 THIS SURVEY WAS DONE IN COMPLIANCE WITH THE CURRENT STANDARDS OF PRACTICE ADOPTED BY THE TENNESSEE STATE BOARD OF EXAMINERS FOR LAND SURVEYORS.

JOHN ALAN HOOD
TN. R.L.S.#1838

40' 0 40' 80'
GRAPHIC SCALE
(IN FEET)
1"= 40'

EXHIBIT "C"

TO THE DECLARATION FOR
THE HOMES AT 1716 A & B MCKINNEY AVENUE,
A HORIZONTAL PROPERTY REGIME
WITH PRIVATE ELEMENTS

BY-LAWS OF THE HOMES AT 1716 A & B MCKINNEY AVENUE HOA, INC.

BY-LAWS

OF

THE HOMES AT 1716 A & B MCKINNEY AVENUE
HOA, INC.

ARTICLE I

**Association of Unit Members**

Section 1. Eligibility. The Members of The Homes at 1716 A & B McKinney Avenue HOA, Inc., a Tennessee not-for-profit corporation, shall consist of the Unit Owners of the Property known as 1716 A & B McKinney Avenue, 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 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. Meetings. The annual and special meetings of the Association shall be held at a time and place mutually agreed upon by the Members.

Section 4. Quorum; Voting. At any meeting of the Association, both members shall be present or by proxy to constitute a quorum.

Section 5. 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.

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 two (2) persons, and all such directors shall be Unit Owners (or owners of an interest in a Unit). In the event that a member, owner or employee of Developer sits on the Board of Directors, such Director position(s) shall be automatically vacated at the time the Developer no longer owns any Units. At such time, the Unit Owners shall designate replacement Director(s), it being understood that a

member, owner or employee of Developer may no longer sit on the Board of Directors if Developer no longer owns any Units. This automatic removal of a member, owner or employee of Developer shall take effect that date of the closing(s) that divest Developer of all ownership interest in the Units, and shall relieve Developer, and such member, owner or employee of Developer, of any further rights or obligations as a Director.

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

(d) 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; and

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

Section 4. Vacancies. Vacancies in the Board of Directors shall be filled by vote of the Unit Owner represented by the vacant seat.

Section 5. Compensation. No compensation shall be paid to directors for their services as directors.

Section 6. Meetings. Regular or special meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by mutual agreement of the directors.

## 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, provided, however, that no one person shall serve as both President and Secretary simultaneously. In the event that a member, owner or employee of Developer holds officer position(s), such officer position(s) shall be automatically vacated at the time the Developer no

longer owns any Units. At such time, the Unit Owners shall designate replacement officer(s), it being understood that a member, owner or employee of Developer may no longer hold any officer position if Developer no longer owns any Units. This automatic removal of a member, owner or employee of Developer shall take effect that date of the closing(s) that divest Developer of all ownership interest in the Units, and shall relieve Developer, and such member, owner or employee of Developer, of any further rights or obligations as an officer.

Section 2. 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.

Section 3. Secretary/Treasurer. The Secretary/Treasurer 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; shall have the responsibility for Association funds and securities; shall be responsible for keeping full and accurate accounts of all receipts 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; and shall have other powers and duties as may be incidental to the office of Secretary/Treasurer, given him by these By-Laws or assigned to him from time to time by the Board of Directors.

## 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, working capital fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, and all other common expenses.

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. Each Unit Owner shall pay his respective share of the common expenses in such intervals as the Board determines. The proportionate share for each Unit Owner shall be based upon his respective ownership interest in the Association as set forth in the Declaration.

Section 3. 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.

## 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. 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 Building and Property as may be required for the 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 their agents to service any Unit. While Developer owns any of the Units and until each Unit sold is occupied Purchasers, Developer and their employees may use and show one (1) or more of such unsold or unoccupied Units as a model Unit or Units and may use one (1) or more of such unsold or unoccupied Units as a sales office, and may maintain customary signs in connection therewith. During the period of sale by Developer, the Developer shall be allowed a seat on the Board of Directors and voting privileges as provided in Article II herein.

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 persons being adjudged liable for gross negligence or fraud in the performance of his duties as such Director, officer, or committee member.



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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.

The interest of a valid first mortgage 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 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 1716 A & B McKinney Avenue, 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
THE HOMES AT 1716 A & B MCKINNEY AVENUE

Attorney's Opinion

Pursuant to the requirements of Tennessee Code Annotated, Section 66-27-103, the undersigned, Jennifer Ghanem, 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 Homes at 1716 A & B McKinney Avenue HOA, Inc., 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 The Homes at 1716 A & B McKinney Avenue. The required documents are as follows:

(1) Declaration of Covenants, Conditions and Restrictions for The Homes at 1716 A & B McKinney Avenue, a horizontal property regime with private elements;

(2) Site Plan for Homes at The Homes at 1716 A & B McKinney Avenue, showing private and common elements, appended thereto as Exhibit "B"; and

(3) By-Laws of The Homes at 1716 A & B McKinney Avenue HOA, Inc., appended thereto as Exhibit "C";

(4) Charter of The Homes at 1716 A & B McKinney Avenue HOA, Inc., filed or to be filed in the office of the Secretary of State and to be recorded in the Register's Office for Davidson County, Tennessee.

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

This 29th day of June, 2018.

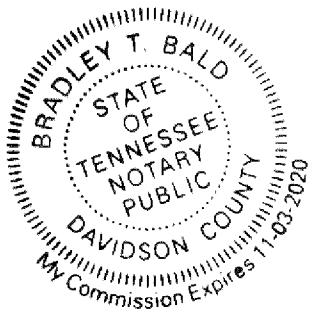
Jennifer Ghanem, Attorney at Law

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 Jennifer Ghanem, Attorney at Law, 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 in Nashville, Tennessee, this 28th day of June, 2018.




Notary Public at Large

My commission expires: 11/3/2020

**True Copy Certification**

I, Elizabeth Preston, 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 Tennessee

County of Davidson

Personally appeared before me, Kendall Connell, a notary public for this county and state, **Elizabeth Preston** who acknowledges that this certification of an electronic document is true and correct and whose signature I have witnessed.

Notary's Signature

My Commission Expires: 9/7/2020

KENDALL CONNELL
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 09-07-2020