Karen Johnson Davidson County
Batch# 270033 DEEDMAST
08/12/2019 03:14:06 PM 25 pgs
Fees: $127.00 Taxes: $0.00
20190812-0080330

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR 136 FAIN STREET RESIDENCES

This Declaration of Covenants, Conditions and Restrictions, hereinafter sometimes referred to as the "Declaration", is entered into by **Cream City Development LLC** (herein referred to, together with its heirs and assigns, as "Developer");

WITNESSETH:

WHEREAS, Developer is the legal title holder in fee simple of a certain tract of real estate located in the County of Davidson County, State of Tennessee, more particularly described on attached **Exhibit A**, which is herein incorporated by this reference thereto (the "Property"); and

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

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

NOW, THEREFORE, Developer, as the legal titleholder 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 Tennessee Horizontal Property Act (T.C.A. § 66-27-101 et seq.). All capitalized terms not otherwise defined herein but defined in the Act, shall be deemed to have the meaning ascribed to them in the Act.

   (b) "Association" is a non-profit Tennessee corporation known as the **136 Fain Street Residences** Homeowners' Association, Inc., which includes as members all of the Unit Owners.

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

   (d) "Building(s)" means the building (or buildings) located on the Property and containing the Units as delineated on the Plat.

   (e) "Bylaws" means the Bylaws of the Association, attached hereto as **Exhibit C** and by this reference 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 Bylaws.

(f) "Common Elements" means all real property and improvements, owned by the Association for the common use and enjoyment of the Owners. Common Elements shall remain undivided and shall not be the subject of an action for partition.

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

(h) "Limited Common Elements" means all Common Elements contiguous to and serving exclusively a single Unit or a certain number of Units as specified on the Plat as an inseparable appurtenance thereto, the enjoyment, benefit and/or use of which is reserved to the lawful Occupants of such Unit or Units either in this Declaration, on the Plat or by the Board. Limited Common Elements located upon or serving a Private Element (or Private Elements) shall be treated as a Private Element in regards to the Unit in which it serves pursuant to this Declaration.

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

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

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

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

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

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

(o) "Plat" means the representation of the Property prepared by the Developer and attached hereto as **Exhibit B**, showing the number of each Unit, and expressing its area, location and other data necessary for identification.

(p) "Project" means the entire parcel including all structures thereon.

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

(r) "Property" means all the land, property and space which is the subject of this Declaration as more particularly described on **Exhibit A** hereto, and all structures and other improvements now or hereafter erected, constructed or contained therein or thereon, including without limitation the Buildings and all easements, rights, privileges and appurtenances belonging or in any way pertaining thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners.

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

(t) "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 Bylaws.

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

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

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

4. Administration and Operation of the Property

(a) Association of Unit Owners. The Association, which has been or will be incorporated, shall be the governing body for all of the Unit Owners, for the maintenance, repair, replacement, administration and operation of the Property, as provided in the Act, this Declaration and the Bylaws. The Bylaws for the Association shall be the Bylaws attached to this Declaration as **Exhibit C** and made a part hereof. The Board shall be elected and shall serve in accordance with the provisions of the Bylaws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time, as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of the Unit Owners in accordance with the provisions of the Act, this Declaration and the Bylaws. Each Unit Owner shall be a member of the Association so long as he is a Unit Owner. A Unit Owner's membership shall automatically terminate when he ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the association shall be equal to the number of Units shown on the Plat with one (1) vote granted to each Unit.

(b) Voting Membership.

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

(2) Class B. The Class B Member shall be the Developer and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease upon the sale of all Units to Unit Owners.

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

(d) Use by Developer. During the period of sale by Developer of any Units, Developer and Developer's agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access and ingress to and egress from the

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

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

5. Boards Determination Binding. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any agreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of this Declaration or the Bylaws, the determination thereof by the Board shall be final and binding on each and all such Unit Owners. In the event the dispute cannot be settled by the Board, the Unit Owners may pursue their claims in a court of competent jurisdiction located in the county in which the property lies.

6. Ownership of the Common Elements. The Common Elements shall be owned by the Association, and the Common Elements are hereby vested in the Association. Each Unit Owner shall be allocated an equal percentage of undivided ownership in the Association. The percentages of ownership interests shall remain constant unless hereafter changed by recorded amendment to this Declaration. Said ownership interest shall be an undivided interest in the Association which shall be owned by the Unit Owners as tenants in common. The ownership of each Unit shall not be conveyed separate from the percentage of corresponding ownership appurtenant to said Unit. The undivided percentage of ownership in the Common Elements corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit. Such Common Elements are not and shall not be the subject of any partition action.

7. Use of Common Elements. Each Unit owner shall have the right to use the Common Elements (except the Limited Common Elements) in common with all other Unit Owners, as may be required for the purposes of access and ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Unit owner. Such right to use Common Elements shall extend not only to each Unit owner, but also to his agents, customers, guests, visitors, invitees and licensees. However, each Unit Owner also shall have the right to exclusive use and possession of the Limited Common Elements contiguous to and serving such Unit alone. Such rights to use the Common Elements, including Limited Common Elements, shall be subject to and governed by the provisions of the Declaration, Bylaws and the rules and regulations of the Association. In addition, the Association shall have the authority to lease grant concessions or grant easements with respect to parts of the Common Elements, subject to the provisions of this Declaration and the Bylaws. All income derived by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

8. Common Expenses. Each Unit Owner shall pay his proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in accordance with this Declaration and the Bylaws (which expenses are herein sometimes referred to as "common expenses"), including, but not limited to, the maintenance and repair of the Common Elements and any and all replacements and additions thereto. Any such expenses with respect to Limited Common Elements shall be borne by the Unit Owners to whose Units such Limited Common Elements are appurtenant, in accordance with such Unit Owners' percentage of ownership interest therein. Payment of common expenses, including

any prepayment thereof required by a contract for sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. No Unit Owner shall be exempt from payment of his proportionate share of the common expenses by waiver of the use or enjoyment of the Common or Limited Common Elements or by abandonment of his Unit. If any Unit Owner shall fail or refuse to make any such payment of common expenses when due, the amount thereof, together with the interest thereon at the maximum allowable rate at law per annum 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 in the Property as provided in the Act. The sale or conveyance of a Unit shall in all cases be subject to all unpaid assessments against the Unit Owner thereof for his pro rata share in the common expenses, and if the same are not paid by the owner thereof prior to any sale or conveyance, shall be a lien against the Unit and shall be payable by the new Unit Owner thereof. Likewise, all taxes and other levies and assessments by governmental taxing bodies shall be a lien against individual Units.

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

10. Separate Real Estate Taxes. Real estate taxes shall be separately taxed to each Unit Owner for his Unit, including its appurtenant interest in the Common Elements and Limited Common Elements, and its corresponding interest in the Association as provided in the Act. In the event that such taxes for any year are not separately taxed to each Unit Owner, but rather are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Association, and, in said event, such taxes shall be a Common Expense.

11. Insurance. Each Unit Owner shall be responsible for obtaining his own insurance for his Unit (including the Private Elements), the contents of his own Unit, the Limited Common Elements serving his Unit, as well as his additions and improvements thereto, all decorations, furnishings and personal property therein, and any personal property stored elsewhere on the Property. The insurance policy shall afford, as a minimum protection against loss or damage by fire or other perils normally covered by the "Causes of Loss – Special Form Basis" endorsement, where such is available, and such policy shall be in an amount equal to 100% of current replacement cost of such individual Unit Building and all such alterations, additions, improvements or betterments thereto and any Limited Common Elements serving his Unit. Each Unit Owner shall also obtain his own comprehensive public liability insurance policy, insuring each Owner, mortgagee of record, if any, the Association, its officers, directors, Board and employees from liability in connection with such Unit Owner's individual Unit or any Limited Common Element serving his Unit.

The Board shall have the authority to obtain insurance for the Common Elements against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements, and against such other hazards and for such amounts as the Board may deem advisable. Insurable replacement cost shall be deemed to be the cost of restoring the Common Elements, 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 each of the Unit Owners in direct proportion to said Unit Owner's respective percentage of ownership in the Association, as set forth in this Declaration, and for the holders of mortgages on his Unit as loss payee, if any. The policy of insurance shall also contain, if possible, a waiver of subrogation rights by the insurer against individual Unit Owners. The premiums for such insurance shall be a Common Expense.

The Board also shall have authority to obtain comprehensive public liability insurance, in such amounts as it deems desirable and worker's compensation insurance and other liability insurance as it deems desirable, insuring each Unit Owner, the mortgagee(s) of Record, if any,

the Association, its officers, directors, Board and employees, Developer and any Managing Agent, from (i) liability in connection with the Common Elements, and (ii) liability arising out of legal proceedings relating to employment contracts to which the Association is a party (to the extent such insurance is reasonably available). The premiums for such insurance shall be a Common Expense. The Board shall retain in safekeeping any such public liability policy for six (6) years after the expiration date of the policy.

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

12. Maintenance, Repairs and Replacements. 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 own Unit, Private Elements and Limited Common Elements exclusively serving his Unit or the Board may cause the same to be done at the expense of the Unit Owner. Each Unit Owner shall be responsible for the maintenance, repairs to and replacements of Limited Common Elements and Private Elements attached to such Owner's Unit, including, but not limited to roof, roofing structure, windows, doors, patios, porches, decks, yards, gutters, heating or air-conditioning units, window boxes, landscaping, walls (interior and exterior) and the portions of the Building that are not Common Elements. Maintenance, repairs and replacement of the Common Elements shall be part of the Common Expenses and shall be furnished by the Association subject to the provisions of this Declaration, the Bylaws and the Rules and Regulations of the Association.

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

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 individual Units, Limited Common Elements and Private Elements as may be required in connection with the preservation of any individual Unit or Limited Common Elements or Private Elements in the event of an emergency, or in connection with any maintenance, repairs or replacements within the Common Elements, Limited Common Elements, Private Elements or any equipment, facilities or fixtures affecting or serving other Units, Common Elements, Private Elements and Limited Common Elements, or to make any alteration required by any governmental authority.

13. Alterations, Additions or Improvements. The Common Elements, or any additions or improvements thereto, shall not be altered or changed by any Unit Owner, without the prior written consent of the Board. The Board may authorize and charge as Common Expenses alterations, additions and improvements of the Common Elements as provided in the Bylaws. Any Unit Owner may make non-structural alterations, additions or improvements within the Unit without the prior written approval of the Board, but such Unit Owner shall be responsible for any damages to other Units, the Common Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements.

14. Decorations, Cleaning, Landscaping. Each Unit Owner, at his own expense, shall furnish and be responsible for all decorations, landscaping and cleaning within his own Unit and the Limited Common Elements serving his Unit.

15. Encroachments. If any portions of any party wall, if any, or Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements, or if any Unit shall actually encroach upon another Unit, as the Common Elements and Units are shown by the Plat, there shall be deemed to be mutual easements in

favor of the Owners of the Common Elements and the respective Unit Owners involved, to the extent of such encroachments, so long as the same shall exist.

16. Party Walls. The following provisions shall apply to party walls within the Project, if any:

(a) Each wall which is built as a part of the original construction of a structure and placed on the dividing line between Units shall constitute a party wall. To the extent not inconsistent with the provisions of this section, general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the Unit Owners who make use of the wall in proportion to such use.

(c) If a party wall is destroyed or damaged by fire or other casualty, any Unit Owner who has used the wall may restore it and if other Unit Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however to the right of any such Unit Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this section, a Unit Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Unit Owner to contribution from any other Unit Owner under this section shall be appurtenant to the land and shall pass to such Unit Owner's successors in title.

17. Use and Occupancy Restrictions. Subject to the provisions of the Bylaws, no part of the Property may be used for purposes other than as allowed by municipal zoning laws.

18. Remedies. In the event of any violation of the provisions of the Act, this Declaration, the Bylaws or the rules and regulations of the Board or the Association by any Unit Owner (either by his own conduct or by the conduct of any other Occupant of his Unit or any invitee or licensee thereof) the Association, or its successors or assigns, or the Board, or its agent, shall have each and all of the rights and remedies that may be provided for in the Act, this Declaration, the Bylaws or said rules and regulations, or that may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting Unit Owner and/or other Occupant for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. All expenses of the Board in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest, thereon at the maximum allowed rate by law per annum until paid, shall be charged to 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 Association shall have a lien for all of the same, as well as for non-payment of his respective share of the common expenses, upon the Unit and ownership in interest in the Common Elements 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 interest of such Unit Owner, except for the amount of the proportionate share of said common expenses that become due and payable from and after the date on which the beneficiary of said mortgage or deed of trust either takes possession of the Unit, accepts a conveyance of any interest therein (other than as a security) or forecloses its mortgage or deed of trust. In the event of any such default by any Unit Owner, the Board and the manager or Managing Agent, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner and secured by the lien hereinabove provided. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board. This

paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of mortgage and deed of trust liens against Units whose respective interests appear of Record.

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

19. Amendment. The provisions of this Declaration may be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission, signed by not less than sixty-seven percent (67%) of the Unit Owners and acknowledged; provided, however, that all lien holders of Record shall have been notified by certified mail of such change, modification or rescission and an affidavit by the secretary of the Association certifying to such mailing shall be made a part of such instrument.

Notwithstanding the foregoing, if the Act, this Declaration or the Bylaws require the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all Unit Owners or all lien holders or both as required by the Act or this Declaration. The change, modification or rescission, shall be effective upon the Recording of such instrument; provided, however, that no provisions in the Declaration may be changed, modified or rescinded so as to conflict with the provisions of this Act.

20. Notices. Notices provided for in the Act, this Declaration or the Bylaws shall be in writing, and shall be addressed to the Association, the Board or any Unit Owner, as the case may be. The Association or Board may designate alternate address(es) for notices by written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by the United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof.

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

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

22. Rights and Obligations. All future Unit Owners and Occupants shall be subject to and shall comply with the provisions of this Declaration. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in the Property, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every such deed of conveyance or contract for conveyance.

All present and future Unit Owners, tenants and occupants of a Unit shall be subject to, and shall comply with, the provisions of the Bylaws, as amended from time to time. The acceptance of a deed of conveyance, devise of or lease to a Unit, or the entering into occupancy of any Unit, shall constitute an agreement that the provisions of the Bylaws and any rules and regulations promulgated thereunder, as amended from time to time, are assumed, accepted and ratified by such Unit Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time

any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

The terms and conditions of this Declaration, the Bylaws and the rules and regulations promulgated thereunder may be incorporated by reference in, and become part of any agreement between any first mortgagee and any Unit Owner who enters into such agreement with a first mortgagee. When so incorporated, any default, in the terms and conditions of this Declaration, the Bylaws or the said rules and regulations may be considered as a default by the first mortgagee, 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. Trustee as Unit Owner. In the event title to any Unit is conveyed to a land title holding trust, under the terms of which all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiary or beneficiaries thereunder shall be considered Unit Owners for all purposes and they shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation created hereunder, and such trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien obligation. The amount of any such lien or obligation shall continue to be a charge or lien upon the Unit and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfer of title to such Unit.

24. Condemnation. In the event of a taking in condemnation or by eminent domain of a part of the Common Elements, the award made for such taking shall be payable to the Board for and on behalf of the Association. If a majority of the Board in its sole and absolute discretion approve the repair and restoration of such Common Elements, the Board shall arrange for the repair and restoration of such Common Elements, the Board shall disburse the proceeds of such award to the contractor(s) engaged in such repair and restoration in appropriate progress payments. In the event that 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 each Unit's percentage of ownership in the Common Elements. Notwithstanding the foregoing, the award for the taking of a Limited Common Element or Private Element by eminent domain shall be payable to the affected Unit Owner.

25. Rights Reserved. The Unit Owners' rights of enjoyment in the Common Elements shall be subject to:

(a) The right of the Association, as provided in its Bylaws, to suspend the enjoyment rights of any member in the Common Elements for any period during which any Assessment remains unpaid; and

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

(c) The right of the Association to diminish in any way or to dedicate or transfer all or any part of the Common Elements to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the members entitled to vote thereon, provided that no such diminution or dedication or transfer, nor any determination as to the purposes or conditions thereof, shall be effective unless Developer (or its successors or assigns) and members of the Association entitled to cast two-thirds of the total votes of all classes of members entitled to vote thereon have approved such dedication, transfer, purpose or condition; and

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

(e) The right of Developer to amend this Declaration and the Plat for the purpose of altering the boundaries between adjoining Units and changing the allocated percentage of ownership allocated to such Units owned by the Developer prior to the first conveyance of any such Units to a person other than the Developer; and

(f) The right of Developer, at its sole expense, to relocate, expand, modify, reduce, enlarge or extend existing driveways, parking areas and yard and to construct, relocate, expand, modify, reduce, enlarge or extend sewers, utility lines or service connections in order to serve the existing Building.

(g) The right of the Developer to add any real estate to the Property and to create additional Units or Common Elements or Limited Common Elements; and

(h) The right of the Developer 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 comply with the requirements of the Act, as required by an applicable government authority, the Federal National Mortgage Association, the Federal Housing Authority, the Federal Home Loan Mortgage Corporation, the Veteran's Administration or other mortgage lending programs that can afford financing for the purchase of Units.

26. Provisions Relative to Mortgagee's Rights and to Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Regulations. Notwithstanding anything to the contrary contained in this Declaration, or in the Bylaws which are attached hereto, all terms, conditions and regulations which are now existing, or which may be amended from time to time, by the Federal Home Loan Mortgage Corporation ("FHLMC") or Fannie Mae ("Fannie Mae") pertaining to projects of this nature are hereby incorporated as terms and conditions of the Declaration and Bylaws and such shall be governing upon the Property, the 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 Tennessee Code Annotated, Section 66-27-101, et seq., as such may be amended.

Specifically, without limitation upon the foregoing, the following provisions shall be fully effective and controlling over any terms of the Declaration or Bylaws which are in conflict. Any portions of such Declaration or Bylaws which are in conflict with this paragraph, or any portion of the FHLMC and Fannie Mae regulations pertaining to planned unit developments, are hereby deleted and the following rights of mortgagees are itemized as follows:

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

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

(c) Unless two-thirds (2/3) of the first mortgagees (based upon one (1) vote for each mortgage owned), or owners (other than the Developer) of Units have given their prior written approval, the Association shall not be entitled to:

(1) Change the percentage interests of ownership of all or any Unit or Unit Owners, except that percentage ownership of the Association may be reduced due to the addition of a phase or phases to the horizontal property regime as provided hereinabove.
(2) Partition or subdivide any Unit or the Common Elements.
(3) By act or omission seek to abandon the horizontal property regime or status of the Property, or encumber, sell or transfer the Common Elements, except for the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements.

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

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

(e) An adequate reserve fund for maintenance, repair and replacement of Common Elements which must be replaced on a periodic basis will be established and funded by regular monthly payments rather than by special assessments. A working capital fund for the initial months of operation equal to at least two (2) months' assessments for each Unit must be established, collected and transferred to the Association at the time of closing of sale by the Developer of each Unit and maintained in an account for the use and benefit of the Association.

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

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

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

(i) Upon written request, the Association shall give to any mortgagee of a Unit, FHLMC, Fannie Mae, any lending institution servicing such mortgages as are acquired by FHLMC or Fannie Mae, or any insurer or guarantor of a mortgage or deed of trust on a Unit, timely notice in writing of any loss to or the taking of the Common Elements if such loss or taking exceeds $50,000.00, or of any other condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage, a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, or any proposed action that requires the consent of a specified percentage of mortgagees.

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

(k) Notwithstanding the above, any first 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.

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

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

27. 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.

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

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed this 9 day of August, 2019.

Cream City Development LLC

Joseph M Roberts III

Joseph M Roberts III
Authorized Agent

STATE OF Tennessee
COUNTY OF Davidson

On this the 9 day of August, 2019, before me personally appeared **Joseph M Roberts III** to me known (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself as the **Authorized Agent** of **Cream City Development LLC**, the within named bargainor, a Tennessee Limited Liability Company, and that as such **Authorized Agent**, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of **Cream City Development LLC** as such **Authorized Agent** thereof.

Witness my hand and official seal, this the 9 day of August, 2019.

Notary Public

My Commission Expires:

10-7-19

ALISON RODGERS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

EXHIBIT A

Legal Description

Land in Davidson County, Tennessee, being part of Lot No. 28 of Block "B" on the Plan of Hermitage Addition, as of record in Plat Book 57, Page 42, Register's Office for said County, described as follows:

Beginning on the northerly margin of Fain Street at the corner of Lots 28 and 29; thence with the line between said two lots, northerly 144 feet to the southeast corner of the property conveyed to the State of Tennessee by deed from Georgia Doss, as of record in Book 2929, Page 383; thence with said State of Tennessee's boundary line, north 61 degrees 05' west 42 feet to the southerly margin of an alley; thence with the same, westerly 11 feet to the northeast corner of Lot No. 27; thence with the line between Lot Nos. 27 and 28, southerly 160 feet to the northerly margin of Fain Street; thence with the same, easterly 50 feet to the beginning.

Being the same property conveyed to Cream City Development, LLC by Warranty Deed from Brian Adrian Wong, of Record in Instrument Number 20190620-0059295 Register's Office for Davidson County, Tennessee.

EXHIBIT B

Plat
(See Attached)

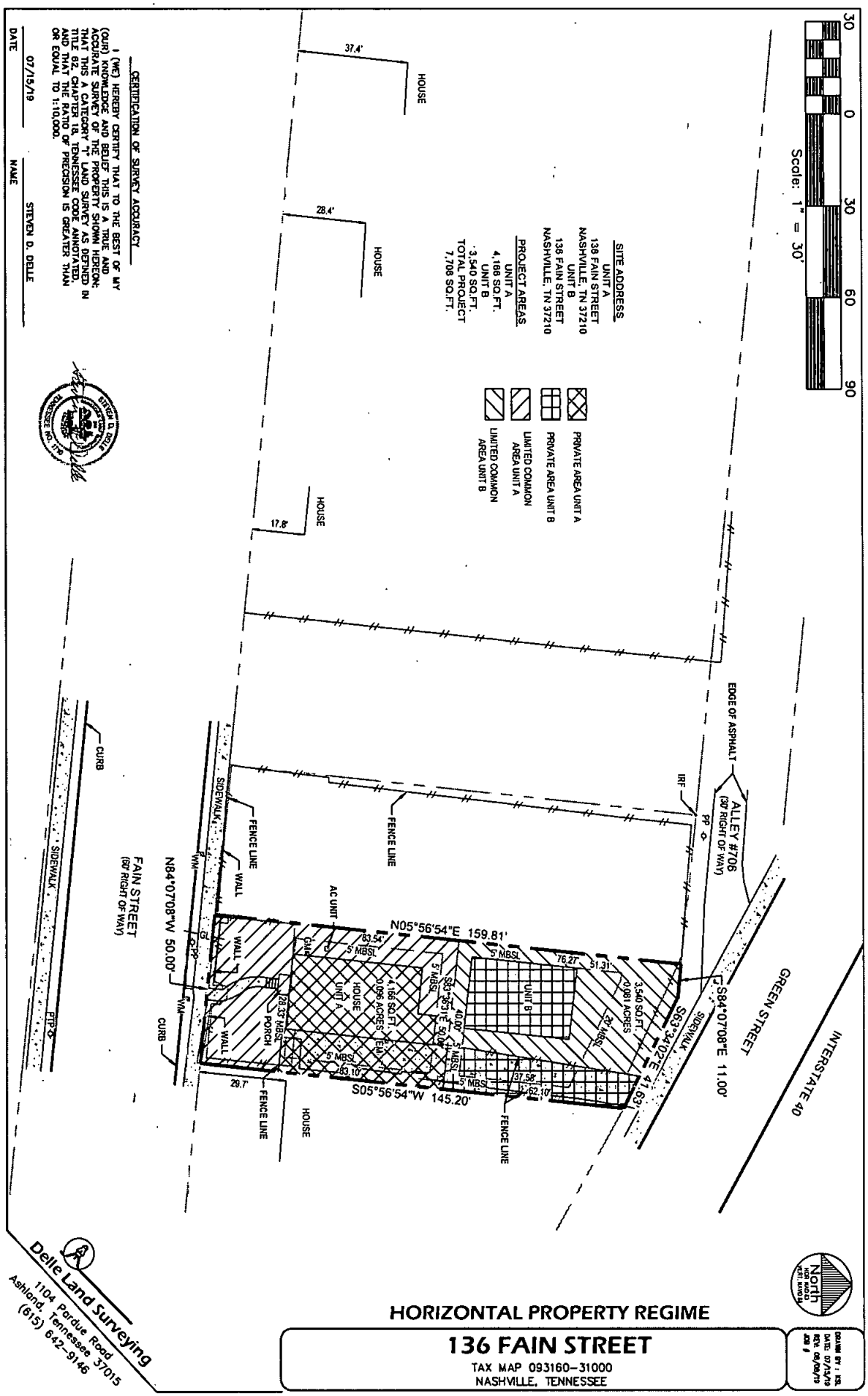

Scale: 1" = 30'
30 0 30 60 90
SITE ADDRESS
UNIT A
136 FAIN STREET
NASHVILLE, TN 37210
UNIT B
138 FAIN STREET
NASHVILLE, TN 37210
PROJECT AREAS
UNIT A
4,166 SQ.FT.
UNIT B
3,540 SQ.FT.
TOTAL PROJECT
7,708 SQ.FT.
PRIVATE AREA UNIT A
PRIVATE AREA UNIT B
LIMITED COMMON AREA UNIT A
LIMITED COMMON AREA UNIT B
CERTIFICATION OF SURVEY ACCURACY
I (WE) HEREBY CERTIFY THAT TO THE BEST OF MY (OUR) KNOWLEDGE AND BELIEF THIS IS A TRUE AND ACCURATE SURVEY OF THE PROPERTY SHOWN HEREON; THAT THIS A CATEGORY "I" LAND SURVEY AS DEFINED IN TITLE 62, CHAPTER 18, TENNESSEE CODE ANNOTATED; AND THAT THE RATIO OF PRECISION IS GREATER THAN OR EQUAL TO 1:10,000.
07/15/19
DATE
STEVEN D. DELLE
NAME
37.4'
HOUSE
28.4'
HOUSE
HOUSE
17.8'
CURB
SIDEWALK
FENCE LINE
WALL
WALL
AC UNIT
WALL
PORCH
CURB
FENCE LINE
HOUSE
FAIN STREET
(50' RIGHT OF WAY)
N84°07'08"W 50.00'
N05°56'54"E 159.81'
S84°07'08"E 11.00'
S05°56'54"W 145.20'
S63°34'02"E 41.63'
63.54'
83.10'
83.33'
29.7'
37.58'
62.10'
76.27'
51.31'
24.46'
5' MBSL
4,166 SQ.FT.
0.096 ACRES
UNIT A
3,540 SQ.FT.
0.081 ACRES
UNIT B
EDGE OF ASPHALT
IRF
PP
ALLEY #706
(20' RIGHT OF WAY)
GREEN STREET
INTERSTATE 40
North
Delle Land Surveying
1104 Pordue Road
Ashland, Tennessee 37015
(615) 642-9146
HORIZONTAL PROPERTY REGIME
136 FAIN STREET
TAX MAP 093160-31000
NASHVILLE, TENNESSEE

EXHIBIT C

BYLAWS OF THE 136 FAIN STREET RESIDENCES HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I. OFFICE

Section 1. Principal Office. The principal office of the Association shall be maintained at the address noted in the Charter of the Association or at such location as the Board of Directors may designate.

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

ARTICLE II. ASSOCIATION OF UNIT OWNERS

Section 1. Annual Meeting. The annual meeting of the Association shall be held at such time and place as shall be determined by the Board.

Section 2. Special Meetings. Special meetings may be held at any time upon the call of the President or upon the call of twenty-five (25%) percent of the total Unit Owners. Upon receipt of such call, the Secretary shall send out notices of the meeting to all members of the Association.

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

Section 4. Waiver of Notice. The presence of all the members, in person or by proxy, at any meeting shall render the same a valid meeting, unless any member shall, at the opening of such meeting, object to the holding of the same for noncompliance with the provisions of this Article II. Any meeting so held without such objection shall be valid for all purposes, and at such meeting any general business may be transacted and any action may be taken; provided, however, that where a member has pledged his vote by mortgage, deed of trust or agreement of sale, only the presence of the pledgee will be counted in determining whether notice is waived with regard to business dealing with such matters upon which the member's vote is so pledged.

Section 5. 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 votes entitled to be cast at such meeting.

Section 6. Membership; Voting. Any person or combination thereof owning any Unit duly recorded in his name, the ownership of which shall be determined by the records of the Register's Office for Davidson County, Tennessee, shall be a member of the Association, and either in person or by proxy entitled to a vote equivalent to one (1) vote for each Unit so owned at all meetings of the Association. For the purposes of clarity, co-owners or joint owners shall be deemed collectively one Unit Owner and one member. The authority given by a member to another person to represent such member at meetings of the Association shall be in writing, signed by such member and shall be filed with the Secretary, and unless limited by its terms, such authority shall stand until revoked by written notice to the Secretary. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association with respect to any Unit owned or held by him in such capacity, whether or not the same shall have been transferred to his name by a duly recorded conveyance. In case such Unit shall not have so been transferred to his name, he shall satisfy the Secretary that he is the executor, administrator, guardian or trustee holding such Unit in such capacity.

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

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

Section 7. Action by Written Consent. Action which is required or permitted to be taken at a meeting of the Unit Owners may be taken without such a meeting if all Unit Owners entitled to a vote on the action consent to taking such action without a meeting.

ARTICLE III. 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 no less than three (3) persons, and the Developer shall appoint the interim Board of Directors until the first meeting. Two (2) Directors shall consist of each Unit Owner. A third Director shall be elected by unanimous decision of the two (2) Unit Owner Directors. Should any Unit Owner Director transfer title to his 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 term, such Director shall cease to be a Director and his or her place on the Board shall be deemed vacant.

Section 2. Powers and Duties. The Board of Directors shall have all of the powers and duties granted thereto in the Declaration and all other powers and duties necessary for the

administration of the affairs of the Association, and may do all such acts and things as are not by law, by the Declaration or by these Bylaws directed to be exercised and done by the Unit Owners.

Section 3. Other Powers and Duties. In addition to duties imposed by the Declaration, these Bylaws or by resolutions of the Association, the Board of Directors shall have the following powers and duties:

(a) to administer the affairs of the Association and the Property;

(b) 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 of the Unit Owners, upon such terms and for such compensation and with such authority as the Board may approve; provided, however, that any management agreement relating to the Property shall be terminable for cause upon thirty (30) days' notice and shall have a term of not less than one (1) year nor more than five (5) years, which term shall be renewable upon approval of the Board of Directors.

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

(d) to adopt rules and regulations, with written notice to all Unit Owners, governing the administration, management, operation and use of the Property and the Common Elements, and to amend such rules and regulations from time to time;

(e) to provide for the surveillance, maintenance, repair and replacement of the Common Elements;

(f) to provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Property and the Common Elements, and to delegate any such powers to the Managing Agent (and any such employees or other personnel who may be the employees of a Managing Agent);

(g) to appoint committees of the Board and to delegate to such committees the Board's authority to carry out certain duties of the Board as provided in the Declaration and these Bylaws;

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

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

(j) to resolve or mediate disputes, conflicts or problems between Unit Owners;

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

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

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

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

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

Section 5. Election and Term of Office. The first annual meeting of the Association will be called by the new President at such time as, in its discretion, it deems best, but in no event shall it be later than three (3) months after all Units have been conveyed. Josh Hellmer or their nominee, shall act as President of the Association until the new President has been named by the Board of Directors. If Developer and/or his nominees as the initial Board and/or Officers, has not resigned prior to the conveyance of the last Unit, then the resignation of Developer and/or his nominees as the initial Board and/or Officers as such shall be automatic and effective thirty (30) days after the conveyance of the last Unit, as evidenced by the real property records for the county that is the situs for the Property.

The directors shall hold office until the earlier of (i) the Unit Owner's transfer of the Property (at which point the transferee Unit Owner (or their designee) shall assume the directorship; or (ii) a successors director has been elected.

Section 6. Vacancies. Any vacancy occurring in the Board shall be filled by majority vote of the remaining Directors, and any Director so elected shall hold office for a term equal to the unexpired term of the Director succeeded.

Section 7. Removal of Directors. 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 8. Compensation. No compensation shall be paid to Directors for their services as Directors, unless expressly provided for in resolutions duly adopted by the Unit Owners.

Section 9. Regular Meetings. Regular meetings of the Board of Directors shall be following the regular annual meeting of the Unit Owners.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the President or by a majority of the Board on no less than forty-eight (48) hours' notice to each Director, given personally or by mail, addressed to his residence, or by telephone, which notice shall state the date, time and place of the meeting. Action which is required or permitted to be taken at a meeting of the Board of Directors may be taken without such a meeting if all Directors consent to taking such action without a meeting.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent

to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Board of Directors' Quorum. A quorum of the Board of Directors consists of a majority (but no fewer than two (2)) of the Directors then in office before a meeting begins.

Section 13. Bonds of Officers and Employees. The Board of Directors may, at its sole discretion, require that all officers and employees (including without limitation any management agent) of the corporation handling or responsible for corporate funds shall be covered by blanket fidelity bonds naming the Association as obligee, which bonds shall be in the amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Project. Each such bond shall contain an agreement to notify the Board, the holder of a first mortgage or deed of trust on a Unit and every other person in interest who shall have requested such notice at least thirty (30) days' prior notice of any cancellation or material alteration of such bond. The premiums on such bonds shall be paid by the Association as a common expense of the Association.

ARTICLE IV. OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President and a Secretary, all of whom shall be elected by and from the Board of Directors. The Directors may appoint a vice president, treasurer, assistant treasurer, assistant secretary, and such other officers as in their judgment may be necessary. An officer may serve in more than one capacity; provided, however, that there shall be no less than two (2) persons serving as officers; and further provided that no one person shall serve as both President and Secretary simultaneously.

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

Section 3. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties that are usually vested in the office of president of an association, including but not limited to the power to appoint committees from among the Unit Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 4. Vice President. The Vice President, if any, shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 5. Treasurer. The Treasurer, if any, shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Board of Directors or of the Association; shall give all notices as provided by these Bylaws, and shall have other powers and duties as may be incidental to the office of Secretary, provided by these Bylaws or as assigned by the Board of Directors. If the Secretary shall not be present at any meeting, the presiding officer shall appoint a secretary *pro tempore* who shall keep the minutes of such meeting and record them in the books provided for that purpose.

Section 7. Auditor. The Association may at any meeting appoint some person, firm or corporation engaged in the business of auditing to act as auditor of the Association and to perform such audits and fiscal duties as may be requested of him by the Association.

Section 8. Compensation. The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by the Unit Owners.

ARTICLE V. OBLIGATIONS OF THE UNIT OWNERS

Section 1. Expenses and Assessments. Every Unit Owner shall contribute, pro rata on the basis of his proportionate share of the Common Expenses as set forth in the Declaration, toward the expenses of administration of the Property and the Association, including but not limited to all types of insurance and the costs of operation, maintenance, repair and replacement of the Common Elements. The Association shall fix a monthly charge for each Unit in an amount sufficient to provide for its pro rata share of all such current expenses, reasonable reserves for future expenses of administration, reasonable reserves for the expenses of utilities, periodic maintenance, repair and replacement associated with the Common Elements and such other expenses as the Association may deem proper, subject to adjustment from time to time as the Association may deem necessary. Such monthly charge shall be due and payable in advance on the first day of every month, shall bear interest thereon at the maximum rate then allowed by applicable law from the date due until paid, and such charges, together with interest as aforesaid and reasonable attorney's fees of the Association (all as provided in the Declaration) shall be a lien on the Unit, assessed prior in right to all other charges whatsoever except assessments, liens and charges in favor of the State of Tennessee and Davidson County for taxes past due and unpaid on such Unit, and amounts and liabilities secured by 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 are due and payable from and after the date on which such deed of trust beneficiary either takes possession of the Unit, accepts a conveyance of any interest therein (other than as security), or files suit to foreclose on its deed of trust. If any Unit Owner shall fail or refuse to pay when due such Owner's proportionate share of the expenses, the Association shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Act, the Declaration or these Bylaws, or as are otherwise available at law or in equity, for the collection of all unpaid assessments.

Section 2. Working Capital. At the option of the Board, a working capital fund may be maintained by the Association. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of the closing of the sale of each Unit and maintained in an account for the use and benefit of the Association. The purpose of the working capital fund is to insure that the Association will have cash available to meet unforeseen expenditures, and/or to acquire additional equipment or services deemed necessary or advisable by the Board, and

disbursements from such fund shall be made as directed by the Board. Amounts paid into the working capital fund shall in no event be considered advance payment(s) of monthly assessments.

Section 3. Maintenance and Repair.

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

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

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

Section 4. Use of Units. All Units shall be used in accordance with the provisions of the Bylaws, the Declaration and the Rules and Regulations.

(a) 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 5. Rules and Regulations. In order to assure the peaceful and orderly use and enjoyment of the Units and Common Elements of the Property, the Association may from time to time adopt, modify and revoke in whole or in part, such reasonable rules and regulations, to be called Rules and Regulations, governing the Units and the Common Elements of the Property as it may deem necessary. The Rules and Regulations, upon adoption, and every amendment, modification and revocation thereof, shall be delivered promptly to each Unit Owner and shall be binding upon all members and occupants of the Property.

Section 6. Deeds of Trust and Mortgages. Any holder of a deed of trust or mortgage with respect to a Unit may file a copy of such instrument with the Board of Directors through the Secretary, who shall be required to notify such holder or mortgagee of:

(a) 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;

(b) 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;

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

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

Section 7. Insurance. The Board on behalf of the Association and its Common Expense shall at all times keep the Common Elements insured against loss or damage by fire with extended coverage in an insurance company authorized to do business in the State of Tennessee in accordance with the Declaration.

ARTICLE VI. EXECUTION OF INSTRUMENTS

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

ARTICLE VII. LIABILITY OF OFFICERS, DIRECTORS AND MEMBERS

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

Section 2. Indemnification. The Association shall indemnify and hold harmless each of its directors and officers, each member of any committee appointed pursuant to these Bylaws, the Board and/or Developer against all contractual and other liabilities to others arising out of contracts made by or other acts of such directors, Board, officers, committee members or Developer, on behalf of the Unit Owners, or arising out of their status as directors, officers, committee members or Developer, unless any such contract or act shall have been made fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director, officer, Board, committee member or Developer may be involved by virtue of such person(s) being or having been such director, officer, committee member or Developer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such director, officer, committee member or Developer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person(s) being adjudged liable for gross negligence or fraud in the performance of his or their duties as such director, officer, committee member or Developer.

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

Section 4. Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the person or entity seeking such indemnification or payment in advance to repay such amount unless it ultimately shall be determined that he is entitled to be indemnified by the Association as authorized in this Article.

Section 5. Miscellaneous. The Association and Board shall have the power and responsibility to raise, by special assessment or otherwise, any sums required to discharge the

Association's obligations under this Article; provided, however, that the liability of any Unit Owner arising out of any contract made by or other acts of the directors, Board, officers, members of such committees or Developer, or out of the aforesaid indemnity in favor of the directors, Board, officers, members of such committees or Developer, shall be limited to such proportion of the total liability hereunder as said Unit Owner's percentage of interest in the Common Elements bears to the total percentage interest of all of the Unit Owners in the Common Elements. Every agreement made by the directors, Board, officers, members of such committees, Developer or the Managing Agent on behalf of the Unit Owners shall provide that the directors, Board, officers, members of such committees, Developer or the Managing Agent, as the case may be, are acting only as agents for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements.

ARTICLE VIII. AMENDMENT

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

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

ARTICLE IX. MISCELLANEOUS

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

Section 2. Terms Defined in Declaration. Capitalized terms not defined herein shall have the meaning given them in the Declaration, to which these Bylaws are attached and of which these Bylaws are a part.

EXHIBIT D
ATTORNEY'S OPINION

As an attorney licensed to practice law in the State of Tennessee, I hereby state that in my opinion, all legal documents required under the terms of the Tennessee Horizontal Property Act for creation of a planned unit development are being recorded as of the date of recording of this opinion. Having recorded said documents, a planned unit development is deemed to have been properly organized under the terms of the Tennessee Horizontal Property Act, T.C.A. §66-27-101 et seq.

Witness my hand this the 9th day of August, 2019.

Megan Paulus
Rudy & Partners, PLLC
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Nashville, TN 37212