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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

HOMES AT 933 SOUTHSIDE,

A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

(THIS IS A PLANNED UNIT DEVELOPMENT PURSUANT TO TENNESSEE CODE ANNOTATED § 66-27-103(b))

THIS DECLARATION has been made and entered into by **D&M Development, LLC, a North Dakota limited liability company**, for convenience hereinafter referred to as the "Developer", as of the date set forth above the signature below.

W I T N E S S E T H:

WHEREAS, the Developer is the owner of certain real property located in the County of Davidson, State of Tennessee, and described on Exhibit A attached hereto (the "Parcel"); and

WHEREAS, the Developer desires to and does hereby submit the Parcel, together with all improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any way pertaining thereto (the "Property") to the provisions of the Tennessee Horizontal Property Act, Tenn. Code Ann. § 66-27-101 et seq., for the express purpose of establishing thereon a horizontal property regime with private elements to be known as Homes at 933 Southside; and

WHEREAS, the Developer further desires to establish said horizontal property regime with private elements 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 hereinafter acquiring any interest in the Property, shall hold such 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, as hereinafter set forth, all of which are declared to be in furtherance of a plan to promote

and protect the cooperative aspects of residence on the Property, and are established for the purpose of enhancing the value, desirability and attractiveness of the Property.

NOW, THEREFORE, the Developer declares as follows:

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

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

(b) "Association" means Homes at 933 Southside Association, Inc., a Tennessee not-for-profit corporation.

(c) "Board" means the Board of Directors of the Association.

(d) "Bylaws" means the Bylaws of the Association, attached hereto as Exhibit "B" and made a part hereof, as amended from time to time. For purposes of the Act, all provisions contained in this Declaration dealing with the administration and maintenance of the Property shall be deemed to be a part of the Bylaws.

(e) "Common Elements" means all real and personal property within the Property other than the Units (which include the Private Elements within the Units), which are now or hereafter owned by the Association. The Common Elements are all areas included in the Parcel which are not a part of the Private Elements or Limited Common Elements shown on the Plat and shall be held by the Association for the common use and enjoyment of the Unit Owners. The Common Elements shall include, but shall not be limited to lawns, gardens, roadways, parking areas, drainage structures and facilities, fences, sidewalks, signs, lights and utilities designated as Common Elements on the Plat. Common Elements shall be transferred to the Association. Common Elements as used herein shall also mean "General Common Elements" as set forth in the Act.

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

(g) "Developer" means D&M Development, LLC, a North Dakota limited liability company, its successors and assigns, provided such successors or assigns are designated in writing by Developer as a successor or assign of the rights of Developer set forth herein.

(h) "Improvement(s)" means the structure(s) located on any Unit. The location of the Improvement(s) is and shall be delineated on the Plat and designated as Private Elements.

(i) "Limited Common Elements" means the area of any Unit contiguous to that Unit's Private Elements, the enjoyment, benefit or use of which is reserved to the lawful Occupants of such Unit. The area of the Limited Common Elements for each Unit is as shown on the Plat.

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

(k) "Parcel" means the parcel or tract of real estate described on Exhibit "A" attached to this Declaration.

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

(m) "Plat" means the map or drawing of the Parcel submitted pursuant to the provisions of the Act showing the designation (by number or letter) of each Unit, expressing its area, location and other data necessary for identification including but not limited to the area of the Private Elements and Limited Common Elements of the Unit, said Plat being attached hereto as Exhibit C, and to be placed of record as a part of this instrument with the Register's Office for Davidson County, Tennessee.

(n) "Private Elements" means the Improvements located on a Unit. Exclusive ownership in fee simple and use of the Private Elements and Limited Common Elements for each Unit is reserved to such Unit. The area of the Private Elements and Limited Common Elements for each Unit is as shown on the Plat.

(o) "Property" means all the land and space comprising the Parcel, and all improvements and structures thereon, including all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.

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

(q) "Unit" means a portion of the Property as shown and designated in the Plat for separate ownership and shall include the Private Elements and Limited Common Elements thereof. The Units are 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 is numbered as shown on the Plat. Any Unit may be jointly or commonly owned in any estate recognized under applicable law. The term "Unit" as used in this Declaration shall have the same meaning as the term "Apartment" as used in the Act.

(r) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit, and shall be deemed the same as a "co-owner" under the Act. Unless specifically provided otherwise herein, the Developer shall be deemed a Unit Owner so long as the Developer is the title holder of any Unit.

2. Submission of 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 hereby establishes a horizontal property regime with private elements as authorized and described in the Act and to be hereafter known as Homes at 933 Southside.

3. Plat. The Plat sets forth the numbers, areas, locations, and other data as required by the Act.

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

5. (a) Association of Unit Owners and Administration and Operation of the Property. There has been or will be formed an Association having the name Homes at 933 Southside Association, Inc., a Tennessee not-for-profit corporation, which Association shall be the governing body for all of the Unit Owners and shall be operated to provide for the maintenance, repair, replacement, administration, operation and care of the Property as provided in the Act, this Declaration and Bylaws. The Unit Owners shall each be members of the Association, with each Unit holding an undivided membership interest in the Association which shall be appurtenant to such Unit, each such membership interest appurtenant to a Unit being in an equal share, subject to the provisions concerning voting hereinafter set forth. The Bylaws for the Association shall be the Bylaws attached to this Declaration as Exhibit "B" and made a part hereof. The Board of Directors, if any, of the Association shall be elected and shall serve in accordance with the provisions of the Bylaws. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the use and benefit of Unit Owners in accordance with the provisions of the Declaration and Bylaws. Each Unit Owner shall be a member of the Association so long as such Owner is a Unit Owner and shall automatically terminate when such Owner 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. The aggregate number of votes for all members of the Association shall be divided among the respective Unit Owners with one (1) vote granted to each Unit.

(b) Voting Membership. The 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.

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

ingress to and egress from the said Units, but only of the Units being sold, as may be required for purposes of sale of the Units. While the Developer owns any of the Units and until each Unit sold by it is occupied by the purchasers, the Developer and its employees may maintain customary signs in connection therewith.

(d) Interest of Association in Common Elements. Ownership of the Common Elements shall be vested in the Association.

6. Use of the Common Elements. Except as hereinafter set forth, each Unit Owner shall have the right to use the Common Elements (except the Private Elements and Limited Common Elements of any Unit) 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 to each Unit Owner, and such Owner's agents, servants, tenants, family members, customers, invitees and licensees. However, each Unit Owner shall have the right to the exclusive use and possession of the Private Elements and Limited Common Elements attributable to the Unit. Such rights to use the Common Elements, shall be subject to and governed by the provisions of the Act, Declaration, Bylaws and any rules and regulations established by the Association.

7. (a) Common Expenses. Each Unit Owner shall pay an equal share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance with the Declaration and Bylaws (which expenses are herein sometimes referred to as "common expenses"), including, but not limited to, the maintenance and repair thereof and any and all replacements and additions thereto. No Unit Owner shall be exempt from payment of such Unit Owner's proportionate share of the common expenses by waiver or non-use of enjoyment of the Common Elements, or by abandonment of such Owner's Unit.

(b) Enforcement. In the event any Unit Owner fails to maintain such Owner's Unit, including the Private Elements attributable to such Unit, or in the event any Unit Owner fails to pay such Owner's proportionate share of any common expense when such is due, then in any such event, the other Unit Owner shall have the right to seek enforcement of any such failure by the filing of suit in a court of competent jurisdiction. In the event the such suit is successful, the Unit Owner filing suit shall be entitled to recover reasonable attorney fees and costs incurred in such suit and enforcement of its rights.

(c) Mortgage and Deed of Trust Protection. The lien for common expenses payable by a Unit Owner shall be subordinate to the lien of a recorded mortgage or deed of trust on the interest of such Unit Owner. This subparagraph (c) shall not be amended, changed, modified or rescinded without the prior written consent of all mortgagees and deed of trust beneficiaries of record.

8. Mortgages and Deeds of Trust. Each Unit Owner shall have the right, subject to the provisions herein, to make separate mortgages and deeds of trust for such Unit Owner's respective Unit, including such Unit Owner's respective ownership

interest in the Association. No Unit Owner shall have the right or authority to make or create, or cause to be made or created, from the date hereof, any mortgage, deed of trust or other lien on or affecting the Property or any part thereof, except only to the extent of such Owner's Unit and the interest in the Association corresponding thereto.

9. Separate Real Estate Taxes. Real estate taxes shall be separately taxed to each Unit Owner for such Owner's Unit and including the corresponding percentage of ownership 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 such Owner's proportionate share thereof in accordance with such Owner's respective percentage of ownership interest in the Association, and, in said event, such taxes shall be a common expense.

10. Insurance. The Board shall have the authority to and shall 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 Association. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insuror. The premiums for such insurance shall be a common expense.

The Board shall also have authority to and shall 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, mortgagees of record, if any, the Association, its officers, directors, Board and employees, the Developer, and the Managing Agent, if any, from liability in connection with the Common Elements. 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 shall also have authority to and may obtain such 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 officers of the Association, and members 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 such a committee.

Each Unit Owner shall be responsible for obtaining insurance on the Unit and contents of such Owner's Unit, as well as additions and improvements thereto, decorations, furnishings and personal property therein, and personal property stored elsewhere on the Property.

11. Maintenance, Repairs and Replacements.

(a) Obligations of Unit Owners. Each Unit Owner, at such Owner's expense, shall be responsible for all maintenance of and repairs to such Owner's Unit, Private Elements and Limited Common Elements.

(b) Obligations of Association. The Association shall be responsible for maintenance of and repairs within the Common Elements.

(c) Loss Attributable to Unit Owner. Notwithstanding the foregoing, if, due to the act or neglect of a Unit Owner, or the agent, servant, tenant, family member, invitee, licensee or household pet thereof, damage shall be caused to the Common Elements, or maintenance, repair or replacement are required which would otherwise be a common expense, then such Unit Owner shall pay for such damage or such maintenance, repair and replacements, to the extent not covered by the Association's insurance or if sufficient proceeds are not collected from the insurance carrier.

12. Architectural Control, Alterations, Additions or Improvements.

(a) Alterations, Additions or Improvements. Except as provided specifically herein, no alteration to any Improvements of a Unit, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the other Unit Owner. Any Unit Owner may make alterations, additions or improvements wholly within the interior of the Unit of the Unit Owner without the prior written approval of the other Unit Owner, but such Unit Owner shall be responsible for any damage to other Unit, the Limited Common Elements, the Private Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements.

(b) No Changes on Exterior Without Approval. Notwithstanding anything contained herein, or contained in the Bylaws, to the contrary, no alteration or change, including but not limited to changes to the paint and stain color, roofing shingles, or exterior materials, may be made to the Improvements of any Unit, without the prior written approval of the other Unit Owner.

13. Decorating. Each Unit Owner, at such Owner's expense, shall furnish and be responsible for all decorating within such Owner's Unit and Private Elements serving such Unit.

14. Encroachments and Easements. In the event any utility supply mechanism to any Unit shall lie under, on, or above any other Unit, there shall be deemed an easement for said supply mechanism, which easement shall be permanent and exclusive to the benefit of the Unit receiving the utility service.

15. Use and Occupancy Restrictions. Subject to the provisions of the Bylaws, no part of the Property may be used for purposes other than residential housing and as allowed by municipal zoning laws, but for no other purposes. Notwithstanding the aforementioned restriction, professionals may use their residence (not in violation of

applicable zoning laws) as a home office, provided that no customers or visitors come to the Unit and no merchandise, inventory or equipment is kept, stored, shipped or otherwise dealt with on the Property. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from: (a) maintaining a personal professional library; (b) keeping personal business or professional records or accounts; or (c) handling personal 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, provided they do not violate the above restrictions.

The Common Elements shall be used only by the Unit Owners and their agents, servants, 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; provided, however, that any areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession or easement, presently in existence or entered into by the Board at some future time, affecting any part or all of said Common Elements.

The Limited Common Elements, including, but not limited to, landscaping, gardens, lawn area and driveway, shall be maintained by the respective Unit Owner in the same condition, repair, configuration and layout as at the date of execution hereof.

16. Remedies. In the event of any violation of the provisions of the Act, Declaration, Bylaws or rules and regulations of the Board or Association by any Unit Owner (either by the Unit Owner's own conduct or by the conduct of any other Occupant of such Owners Unit), the Association, the Board, or the other Unit Owner, shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, Bylaws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any such provision or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any other relief as is deemed appropriate by a Court of competent jurisdiction. All reasonable expenses of the Board or other Unit Owner 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 rate of interest then allowed by applicable law, until paid, shall be charged to and assessed against such defaulting Unit Owner.

17. Amendments. Except as specifically stated elsewhere herein, and except for this Section 17, any provisions of this Declaration may be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission, signed by all Unit Owners and acknowledged, provided, however, that all lien holders of record have been notified by certified mail of such change, modification or rescission.

The change, modification or rescission, whether accomplished under the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the office of the Register of Deeds of Davidson County, Tennessee; provided, however, that no provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act.

18. Notices. Notices provided for in the Act, Declaration or Bylaws shall be in writing, and shall be addressed if to a Unit Owner, to the address of such Owner's Unit, and if to the Association or Board, as the case may be to the registered office, as set forth in Charter of the Association or to such other address as may be designated by the Association or Board from time to time, or at such other address as may be hereinafter provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving 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 United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

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

19. Severability. If any provision of the Declaration or Bylaws, 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 Bylaws 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 or the Bylaws shall be construed as if such invalid part was never included therein.

20. Rights and Obligations. Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All future Unit Owners and Occupants shall be subject to and shall comply with the provisions of this Declaration. Any restrictions or rules in the Bylaws which are more than administrative in nature such as, but not limited to, reservations and future rights of the Developer, are hereby incorporated into and made a part of this Declaration by reference. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time an 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, tenants and Occupants of a Unit shall be subject to, and shall comply with, the provisions of the Bylaws appended hereto and recorded herewith as they may be amended from time to time. The acceptance of a deed of conveyance, devise or of a lease to a Unit, or the entering into occupancy of

any Unit shall constitute an agreement that the provisions of the said Bylaws and any rules and regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Unit Owner, tenant or Occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

The terms and conditions of the Declaration, Bylaws and rules and regulations may be incorporated by reference in, and become part of, the agreement between any mortgagee and any present or future Unit Owner who enters into such an agreement with a mortgagee. When so incorporated, any default in the terms and conditions of the Declaration, Bylaws and rules and regulations may be considered as a default by the mortgagee, whereupon said 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.

21. Trustee as Unit Owner. In the event title to any Unit is conveyed to a land title holding trust, under the terms of which all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder shall be considered Unit Owners for all purposes and they shall be responsible for payment of all obligations, liens, or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit. No claim shall be made against any such title holder 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.

22. 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 and all mortgagees affected. If a majority of the Board in their discretion, with written consent of a majority of the mortgagees affected, approve 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 that the Board and the mortgagees do 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 Association to the Unit Owners and the mortgagees as their interests may appear.

23. Rights Reserved. The Unit Owner's right of enjoyment in the property commonly owned by the Association as herein created shall be subject to:

(a) The right of the Association, as provided in its Bylaws, 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; and

(b) The right of the Association to charge reasonable fees for the use of the 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, dedication or transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless the Developer (its successors or assigns) and members of the Association entitled to cast ninety percent (90%) of the total votes of members have been recorded, agreeing to such act; and

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

24. 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:

(i) 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.

(ii) Partition or subdivide any Unit or the Common Elements.

(iii) 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.

(iv) 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. The Association may rely upon the information contained in the book entitled "Mortgages of Units" as must be established pursuant to the Bylaws, for a list of mortgagees to be notified hereby.

(j) The interest of a first mortgagee in a mortgaged Unit shall be superior to the interests of any 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 required to be maintained by the Association shall meet the requirements specified in **Fannie Mae Lending Guide**, Chapter Three, Part 5, "Insurance Requirements."

25. Party Walls. Any wall built as a part of the original construction of a structure upon the Private Elements and placed on the dividing line between two Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be equally shared by the Unit

Owners who make use of the wall, provided that the party causing any damage shall be responsible for the full cost thereof in accordance with applicable law.

26. Legal Opinion. The legal opinion required in Tennessee Code Annotated Section 66-27-103(b) to create a planned unit development under said statute is attached hereto as Exhibit D.

IN WITNESS WHEREOF, the undersigned has executed this Declaration this the 21st day of February, 2020.

D&M Development, LLC

By: _____
James A. Mikolinski, Member

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, the undersigned, a notary public in and for said county and state, **James A. Mikolinski,** 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, and who further acknowledged that he is a Member of the maker and is authorized by the maker to execute this instrument on behalf of the maker.

Witness my hand, at office, this the 21st day of February, 2020.

Commission Expires: _____

ROBERT L. SCRUGGS
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON
My Comm. Expires March 8, 2021

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

Land in Davidson County, Tennessee, being Lot No. 53 on the Plan of Section 100, Edgehill Estates, of record in Book 4860, page 25, Register's Office for Davidson County, Tennessee, to which plan reference is hereby made for a m ore complete description of said lot.

Being the same property conveyed to D&M Development, LLC by Warranty Deed of record as Instrument No. _____202002240020152_____, Register's Office for said County.

EXHIBIT B

BYLAWS OF
THE HOMES AT 933 SOUTHSIDE ASSOCIATION, INC.

The following are the Bylaws of the Homes at 933 Southside Association, Inc., a non-profit corporation incorporated under the laws of the State of Tennessee (the "Association") and shall apply to the horizontal property regime (the "HPR") more particularly described in and created by the Declaration of Covenants, Conditions and Restrictions for Homes at 933 Southside (the "Declaration") and in all present and future Owners and Occupants of any Units and all other persons who shall at any time use the HPR. Terms used herein shall have the same meaning as in the Declaration.

ARTICLE I: Membership

Section 1. Qualification. All Unit Owners shall be members of the Association. The Owner of any Unit, upon acquiring title thereto, shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Unit ceases for any reason, at which time his membership in the Association shall automatically cease. Owners shall be entitled to one (1) vote for each Unit.

Section 2. Place of Meetings. Meetings of the Association shall be held at such place as is convenient to the Unit Owners.

Section 3. Meetings. Annual and special meetings of the Association shall be held at such date and time as determined by the Unit Owners.

Section 4. Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to every Unit Owner (a) by delivering it to the Unit Owner personally, or (b) by leaving it at the Unit Owner's Residence, or (c) by mailing it, postage prepaid, addressed to the Unit Owner at the address for that Unit Owner as it appears on the Association's record of ownership.

Section 5. Quorum. The presence at any meeting in person or by proxy of all of the Unit Owners shall constitute a quorum, and the acts of all of the Unit Owners present, in person of by proxy, at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein.

Section 6. Voting. Each Unit shall be entitled to one vote. Votes may be cast in person or by proxy by the respective Unit Owners as shown in the record of ownership of the Association. If a Unit is owned by two or more persons, any record owner present at a meeting may cast the vote for that Unit. If more than one record owner is present at a meeting, only one owner may cast the vote of the Unit, as the Unit Owners agree among themselves.

Section 7. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the Unit Owners present, whether or not a quorum is present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

ARTICLE II: Officers

Section 1. Designation. The principal officers of the Association shall be a President, a Secretary/Treasurer, and such other officers as in their judgment may be necessary.

Section 2. Election, Term and Compensation. The officers of the Association shall be elected annually by the Association at its annual meeting, who shall serve until their successors have been duly elected and qualified.

Section 3. Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Association and that officer's successor elected at any regular meeting of the Association, or any special meeting.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association. Subject to the control of the Association, the President shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. The President shall also have such other powers and duties as may be provided by these Bylaws or assigned from time to time by the Association.

Section 5. Secretary/Treasurer. The Secretary/Treasurer shall (i) attend and keep the minutes of all meetings of the Association, give all notices thereof as provided by these Bylaws, maintain and keep a continuous and accurate record of ownership of all Units, and have charge of such books, documents and records of the Association as the Association may direct and (ii) maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody, in the name of the Association, of all its funds and securities.

ARTICLE III: Administration

Section 1. Management. The Association shall at all times manage and operate the HPR and have such powers and duties as may be necessary or proper therefor.

Section 2. Managing Agent. The Association may employ from time to time a Managing Agent to manage and control the HPR, subject at all times to direction by the Association, with such powers and duties, and at such compensation as the Association may establish. The employment contract for a Managing Agent or Administrator shall not exceed three years in duration and shall be terminable by the Association without cause and without payment of a termination fee upon 90 days notice.

Section 3. Execution of Instruments. All checks, drafts, notes acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Association or, in the absence of any such resolution applicable to such instrument, by the President of the Secretary/Treasurer.

ARTICLE IV: Obligation of Unit Owners

Section 1. Assessments. All Unit Owners shall pay to the Association, or if a Managing Agent is appointed, to the Managing Agent, in advance, when due, any assessments against their respective Units for Common Expenses of the HPR in accordance with the Declaration.

Section 2. Maintenance of Units. Every Unit Owner shall, at his or her own expense and at all times, repair, maintain, and keep his or her Residence in good order and condition. In addition, each Unit Owner shall maintain all basement walls and floors surrounding his Unit to prevent water leakage into the Unit or adjoining Units, and shall keep clean all interior and exterior windows and any appurtenant garage areas, storage areas, and patio areas. Every Unit Owner and Occupant shall reimburse the Association

promptly on demand for all expenses incurred by the Association in repairing or replacing any loss or damage to the Common Elements, where caused by such Unit Owner or Occupant or by their guests or members of their households.

Section 3. Use of HPR.

(a) Any Unit shall be used solely for one family residential purposes.

(b) All Common Elements shall be used solely for their respective purposes as designed.

(c) No Unit Owner or Occupant shall place, store or maintain in the Common Elements any furniture, packages or objects of any kind or otherwise obstruct transit through such Common Elements or permit said Common Elements to be unsightly or disorderly.

(d) Every Unit Owner and Occupant shall at all times keep his or her Unit in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by the Association or any governmental authority applicable to the HPR.

(e) No Unit Owner or Occupant shall make or suffer any waste or unlawful, improper or offensive use of his Unit or the HPR nor alter or remove any furniture, furnishings or equipment of the Common Elements.

(f) No Unit Owner or Occupant shall erect or place on any Unit any structure, including fences, walls and patios (except as may be wholly within the boundaries of that Unit's Private Elements or Limited Common Elements), nor make any additions or alterations to any Common Elements of the HPR, without the prior written approval of all other Unit Owners.

(g) No signs, posters or bills may be placed or maintained on any Unit unless approved by a majority of Unit Owners, except that a Unit Owner may place and maintain a "FOR SALE" sign on his Unit for a reasonable time, not to exceed 3 feet by 2 feet in size.

(h) All Occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions and amplifiers that may disturb other occupants.

(i) No garments, rugs or other objects shall be hung from windows or facades of any Residence or in other areas within view of other Occupants.

(j) No rugs or other objects shall be dusted or shaken from windows of any Residence or cleaned by beating or sweeping on any exterior part of any Residence.

(k) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any Common Elements except in the areas provided for such purpose.

(l) No livestock, poultry, rabbits, snakes or other such animals shall be allowed or kept in any part of a Unit. Dogs, cats, small caged animals or small birds shall be allowed.

(m) Nothing shall be allowed, done or kept in any Units or Common Elements which would cause any increase in the ordinary rates or the cancellation or invalidation of any insurance thereof maintained by or for the Association or by a Unit Owner.

Section 4. HPR Rules. The Association may adopt, amend or repeal any rules and regulations governing details of the operation and use of the HPR not inconsistent with any provision of law, the Declaration or these Bylaws.

Section 5. Expenses of Enforcement. Every Unit Owner shall pay to the Association promptly on demand all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent assessments against such Unit or enforcing any provisions of the Declaration, these Bylaws or the Rules against such owner or any occupant of such Unit.

Section 6. Record Ownership. Every Unit Owner shall promptly cause to be duly recorded the deed, assignment or other conveyance to him or her of such Unit, or other evidence of his title thereto, and shall file a copy of same with the Association, and the Secretary shall maintain all such information in the record of ownership of the Association.

Section 7. Mortgages. Any Unit Owner who mortgages his Unit, or any interest therein, shall notify the Association of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the record of ownership of the Association. The Association or managing Agent at the request of prospective purchaser of any Unit, or interest therein, shall report to such person the amount of any assessments against such Unit then due and unpaid.

ARTICLE V1: Miscellaneous

Section 1. Amendment. These Bylaws may be amended in any respect not inconsistent with provisions of law or the Declaration by vote of not less than all of the Unit Owners (as defined in the Declaration) at any meeting of the Association duly called for such purpose.

Section 2. Severability. In case any provision of these Bylaws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect.

Section 3. Enforcement. Violation of the provisions of the Declaration, these Bylaws or any HPR rules may be remedied in any court of law or equity having jurisdiction thereof by the Association or its managing agent, or any Unit Owner entitled to relief, with the remedies available to such person or persons including damages, restraining order, injunction, accounting, lien enforcement and specific performance, or any combination thereof.

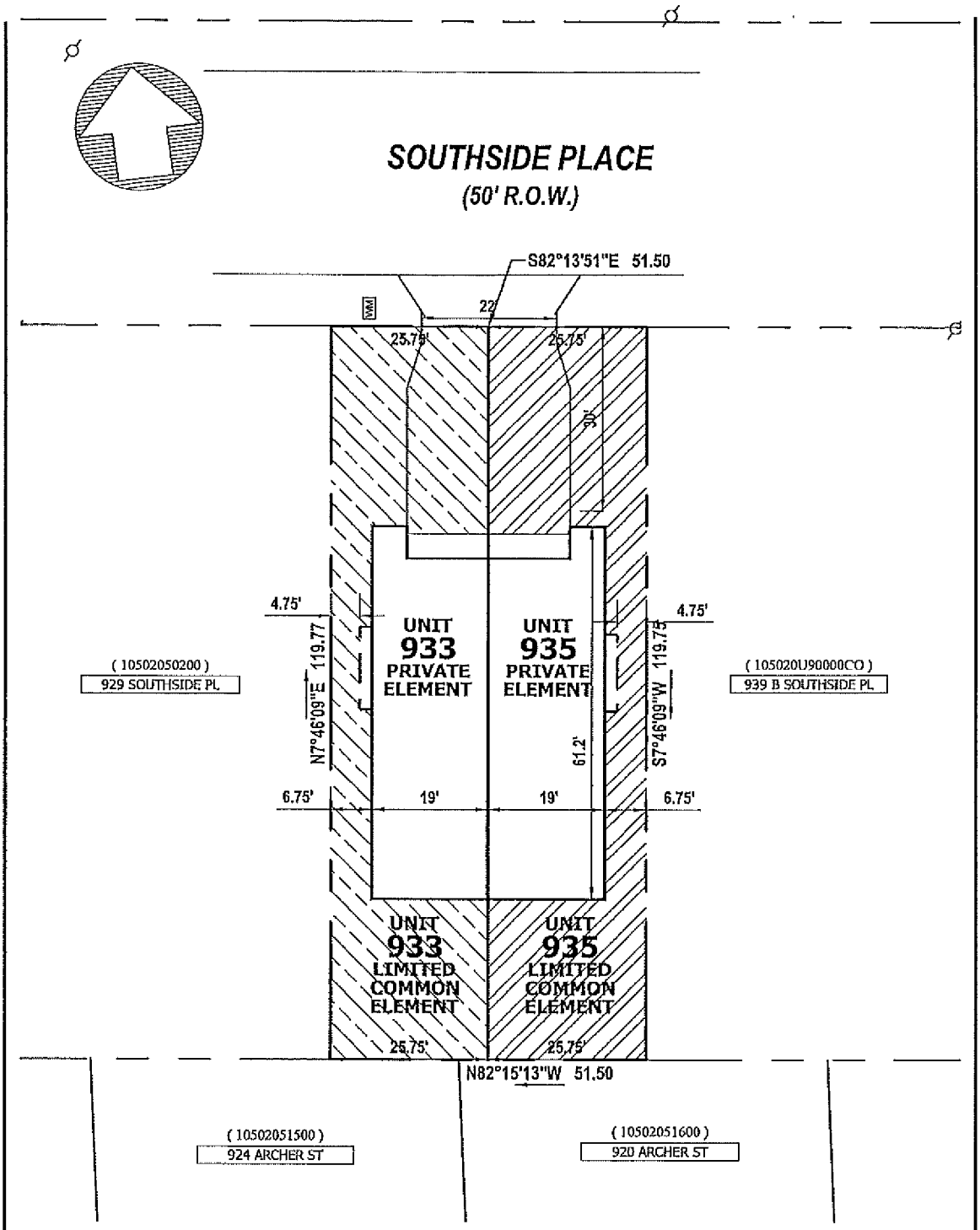
Certificate of Adoption

The undersigned Developer and Owner of all Units of the HPR hereby adopts the foregoing as the Bylaws of Homes at 933 Southside Association, Inc. on the 21st day of February, 2020.

D&M Development, LLC

By: _____
James A. Mikolinski, Member

EXHIBIT C: SITE PLAN FOR HOMES AT 933 SOUTHSIDE



THIS SURVEY WAS DONE UNDER THE AUTHORITY OF TCA 62-18-126 AND IS NOT A "GENERAL PROPERTY SURVEY" AS DEFINED UNDER RULE 0820-3-07. THE INFORMATION SHOWN ON THIS EXHIBIT WAS DERIVED FROM RECORDED DEEDS, PLATS, AND FIELD MEASUREMENTS. SAID PROPERTY IS SUBJECT TO ANY FINDINGS OF AN ACCURATE TITLE SEARCH. NO TITLE WORK WAS FURNISHED TO THE SURVEYOR PRIOR TO THIS EXHIBIT. THIS EXHIBIT IS NOT INTENDED TO BE A BOUNDARY SURVEY OF THE PROPERTY SHOWN HEREON.

JASON A. GARRETT
REGISTERED LAND SURVEYOR
TENNESSEE NO. 2861
Jason Garrett
2-20-2020

EXHIBIT 'C' - Units 933 & 935 SOUTHSIDE PLACE

NASHVILLE, TENNESSEE

Metro Parcel ID: (10502050100)

GRAPHIC SCALE (IN FEET)

20 0 10 20 40

1 inch = 20 ft.

CLINT ELLIOTT SURVEY

1711 Hayes Street
Nashville, TN 37203

clintelliottsurvey.com
(615) 490-3236

Drafted By: MH

ROBERT L. SCRUGGS, ATTORNEY

2021 Richard Jones Road, Suite 220
Nashville, TN 37215

bscruggs@scruggs-law.com

TEL: (615) 309-7090
FAX: (615) 309-7046

February 21, 2020

Mr. James A. Mikolinski, Sr.
1001 South Street
Nashville, TN 37203

Re: Homes at 933 Southside, a Horizontal Property Regime with Private Elements

Dear SBE Partners:

I have reviewed the following:

1. Declaration of Covenants, Conditions and Restrictions for Homes at 933 Southside, a Horizontal Property Regime with Private Elements, dated February 21, 2020, to be filed with the Register's Office for Davidson County, Tennessee.

2. Bylaws of Homes at 933 Southside Association, Inc. attached as Exhibit B to the above Declaration, to be filed with the Register's Office for Davidson County, Tennessee.

3. Plat of Homes at 933 Southside, attached as Exhibit C to the above Declaration, to be filed with the Register's Office for Davidson County, Tennessee.

4. Charter of Homes at 933 Southside Association, Inc, a Tennessee not for profit corporation, dated February 21, 2020, to be created by the filing of the same with the Secretary of State of Tennessee, and to be filed with the Register's Office for Davidson County, Tennessee.

Each of the foregoing documents are incorporated herein by reference.

Based solely on my review of these documents, I am of the opinion that all legal documents required pursuant to Tenn. Code. Ann. §66-27-103(b) for the creation of a planned unit development under said statute have been prepared and that, upon recording the same with the Register's Office for Davidson County, Tennessee, a planned unit development will have been created pursuant to this statute.

Very truly yours,

Robert L. Scruggs

Tennessee Certification of Electronic Document

I, Robert L. Scruggs, do hereby make oath that I am a licensed attorney and/or the
Signer's Name

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.

Robert L Scruggs

Signature

State of Tennessee

County of Davidson

Personally appeared before me, Anthony N. Greco, a notary public for this county and
Notary's Name

state, Robert L. Scruggs, who acknowledges that this certification of an electronic
Signer's Name

document is true and correct and whose signature I have witnessed.

Notary Signature

MY COMMISSION EXPIRES: September 7, 2020

NOTARY'S SEAL

ANTHONY N. GRECO
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON
MY COMMISSION EXPIRES 9-7-2020