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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR *PROXIMITY*, A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

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

THIS DECLARATION made and entered into by **RSD TRINITY LANE, LLC** (the "**Declarant**").

W I T N E S S E T H:

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

WHEREAS, the Declarant desires to submit the Parcel, together with all buildings, structures, improvements, and other permanent fixtures of whatever kind thereon, and all rights and privileges belonging or in any way pertaining thereto (the "**Project**"), to the provisions of the Tennessee Horizontal Property Act, as the same may be amended from time to time for the express purpose of establishing thereon a Planned Unit Development (as defined herein) to be known as **PROXIMITY**; and

WHEREAS, the Declarant further desires to establish said Planned Unit Development for the benefit of Declarant and for the mutual benefit of all future owners and/or occupants of the Project or any part thereof, and intends that all future owners, occupants, mortgagees, and any other parties hereinafter acquiring any interest in the Project, shall hold such interest subject to certain rights, easements and privileges in, over and upon the Project and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof, as hereinafter set forth, all of which is declared to be in furtherance of a plan to promote and protect the cooperative aspects of residence on the Project, and are established for the purpose of enhancing the value, desirability and attractiveness of the Project; and

WHEREAS, as part of the general plan of improvement of the Project, Declarant desires to create an Association (as defined herein) to manage the Project; and

WHEREAS, Declarant desires that the Parcel be held, sold and conveyed subject to the terms, conditions and provisions of this Declaration and the horizontal property regime established hereby.

NOW, THEREFORE, the Declarant declares as follows:

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

(a) "**Act**" shall mean the Horizontal Property Act of the State of Tennessee, Tennessee Code Annotated, Section 66-27-101, et seq., as the same may be amended from time to time.

(b) "**Annual Budget**" shall have the meaning set forth in Article IV, Section 1, of the By-Laws.

(c) "**Assessment**" shall mean an assessment by the Association for Common Expenses or other costs allocable to a Unit pursuant to the Act, this Declaration or the By-Laws, and shall include, without limitation, the Commercial Unit Common Expense Assessment.

(d) "**Association**" shall mean PROXIMITY HOMEOWNERS ASSOCIATION, INC., a Tennessee nonprofit corporation.

(e) "**Board**" shall mean the Board of Directors of the Association (which shall be the "board of administrators" referred to in the Act).

(f) "**Buildings**" shall mean the buildings located on the Parcel and forming a part of the Project. The locations of the Buildings are delineated on the Plat.

(g) "**By-Laws**" shall mean the By-Laws of the Association attached hereto as Exhibit C and made a part hereof, as amended from time to time. For purposes of the Act, all provisions contained in the body of this Declaration dealing with the administration and maintenance of the Project shall be deemed to be part of the By-Laws.

(h) "**City**" shall mean Metropolitan Nashville and Davidson County, Tennessee.

(i) "**Commercial Unit**" shall mean Unit 61, as shown on the Plat.

(j) "**Commercial Unit Common Expense Assessment**" shall by the amount of the monthly Assessment to be paid by the Owner of the Commercial Unit as set forth in Section 8(c) hereof.

(k) "**Common Elements**" shall mean the General Common Elements (if any) and the Limited Common Elements as those terms are as defined herein.

(l) "**Common Expenses**" shall mean the expenses of the administration and operation of the Common Elements, including, but not limited to, the maintenance and repair

thereof and any and all replacements and additions thereto, together with any other expenses incurred in conformance with this Declaration and the By-Laws.

(m) "**Declarant Control Period**" means the period ending on the earlier of (i) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units that may be created within the Project to Unit Owners other than Declarant; or (ii) the date that the Declarant voluntarily relinquishes control of the Association.

(n) "**Declaration**" shall mean this instrument as amended from time to time.

(o) "**Deed**" shall mean an instrument of conveyance pursuant to which fee simple title to a Unit and the associated Private Elements is transferred from one Person to another Person.

(p) "**Directors**" shall mean the members of the Board.

(q) "**Federal Entity**" shall mean the Federal National Mortgage Association, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board and any successor entities.

(r) "**General Common Elements**" shall mean all of the Project except the Units, the Private Elements and the Limited Common Elements.

(s) "**Initial Commercial Unit Common Expense Assessment**" shall mean a monthly Assessment payable by the Owner of the Commercial Unit in the amount of $250.00.

(t) "**Interest Rate**" shall mean the lesser of ten percent (10%) per annum or the maximum rate permitted by applicable law.

(u) "**Limited Common Elements**" shall mean those portions of the Common Elements contiguous to and serving one or more Units to the exclusion of the other Units, as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful Occupants of such Unit(s), either in this Declaration, on the Plat, or by later decision of all of the Unit Owners. The area of Limited Common Elements appurtenant to each Unit is as shown on the Plat. Limited Common Elements located on Private Elements shall be deemed to be Private Elements.

(v) "**Live/Work Units**" or, individually, a "**Live/Work Unit**" shall mean and refer to Units 1, 2, 3, 4, 5, 6, 7, 8 and 9 as shown on the Plat, each of which are also designated as Live/Work Units on the Plat. By virtue of their designation as a Live/Work Unit, each Live/Work Unit may be used for the purposes specifically authorized in Section 16 of this Declaration.

(w) "**Majority**" shall mean at least fifty-one (51%) percent of the Unit Owners.

(x) "**Metro**" shall mean the Metropolitan Government of Nashville and Davidson County.

(y) "**Nonprofit Corporation Act**" shall mean the Tennessee Nonprofit Corporation Act, Tennessee Code Annotated, Section 48-51-101, et seq., as the same may be amended from time to time.

(z) "**Occupant**" shall mean a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

(aa) "**Parcel**" shall mean the parcel(s) or tract(s) of real estate described on Exhibit A attached to this Declaration and submitted hereby to the provisions of the Act as a Planned Unit Development, as such may be amended from time to time.

(bb) "**Permitted Signage Area**" shall mean, in connection with the Live/Work Units, the area below the canopy of the entry door of the Unit and front elevation wall next to the entry door of the Unit.

(cc) "**Person**" shall mean a natural person, a corporation, a partnership, a general partnership, a trust, a trustee, or any other legal entity.

(dd) "**Personal Property**" shall mean the contents, decorations, furnishings, fixtures, appliances, equipment and other personal property of a Unit Owner located in a Unit or elsewhere in the Project.

(ee) "**Phase**" means the addition of additional land on which Units will be constructed, or the construction of additional Units on land that is currently subject to the Declaration, to be submitted to this Declaration by Supplemental Declaration.

(ff) "**Plat**" shall mean the map, plat, survey, site plan or drawing of the Parcel showing the number, area, location and other data necessary for identification of each Unit, including but not limited to the area of the Private Elements upon which the Unit is located and other data necessary for identification of the Units and Private Elements, said Plat being attached hereto as Exhibit B. The Plat may be amended from time to time upon the addition of an additional Phase or Phases pursuant to a Supplemental Declaration. The Plat may be amended from time to time to reflect minor adjustment of location of Units (if necessary) and upon the addition of an additional Phase or Phases pursuant to a Supplemental Declaration.

(gg) "**Planned Unit Development**" means a planned unit development horizontal property regime with private elements established pursuant to the provisions of the Act.

(hh) "**Private Elements**" shall mean the lot area upon which each Unit is located and the Building and any improvements now or hereafter located thereon. Exclusive ownership in fee simple and use of the Private Elements for each Unit is reserved to such Unit. The area of the Private Elements for each Unit is shown on the Plat. Limited Common Elements located on the Private Elements as well as any patios or decks located on Private Elements shall also be deemed to be Private Elements. Private Elements shall also include any HVAC equipment that exclusively serves a

Unit, irrespective of whether such HVAC equipment is included in the Private Elements as shown on the Plat.

(ii) "**Project**" shall mean all the land, property and space comprising the Parcel, and all improvements and structures erected, constructed or contained therein or thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and fixtures, and equipment intended for the mutual use, benefit or enjoyment of Unit Owners, submitted to the provisions of the Act.

(jj) "**Record,**" "**Recorded**" or "**Recording**" shall mean the item has been or shall be placed of record in the Register's Office.

(kk) "**Register's Office**" shall mean the Register's Office for the county in which the Parcel is located.

(ll) "**Residential Sale**" shall mean the sale of a Unit to a party who intends to occupy the Unit or lease the Unit to an Occupant. A Residential Sale shall not include (a) a sale to a party who succeeds to the rights of the Declarant for the purpose of developing the Project or the Units therein; or (b) a lender who takes title from the Declarant by foreclosure or deed in lieu thereof.

(mm) "**Rules and Regulations**" shall mean the rules and regulations concerning the use of the Project, as adopted from time to time by the Board in accordance with this Declaration and the By-Laws.

(nn) "**Start-up Assessment**" shall mean and refer to the initial assessment to be paid upon the sale of a Unit by the Declarant to the first time Unit Owner, as set forth in Section 9.

(oo) "**Supplemental Declaration**" shall mean an amendment to this Declaration that may include the addition of additional Units or Common Elements subjected to this Declaration pursuant to which a portion of the Project is subjected a Planned Unit Development. Such Supplemental Declaration may, but is not required to, impose, expressly or by reference, additional restrictions and obligations to the provisions of this Declaration. The term "Declaration" as used herein shall include this Declaration, together with any and all subsequent amendments (including Supplemental Declarations).

(pp) "**Supplemental Planting Area**" shall mean any area of vegetation or planting installed by a Unit Owner in Private Elements or Limited Common Area in addition to original landscaping, plants or vegetation furnished, installed or provided by the Declarant with respect to a Unit.

(qq) "**Unit**" shall mean a portion of the Project as shown and designated on the Plat for separate ownership and shall include the Private Elements, the residence located thereon and all additions and improvements thereto, including without limitation, all interior and exterior aspects of the improvements, foundations, load bearing walls and columns, beams, supports, roofs, entrances and exits, communication

ways, walls and HVAC equipment (including any HVAC equipment that exclusively serves a Unit but is not within the boundaries of Unit or the Private Elements as shown on the Plat). The Units are identified by a number or alphabetic letter (or combination thereof) on the Plat and may be held and conveyed by reference to such number or letter. Conveyance of a Unit shall automatically convey the membership of the Unit Owner in the Association, together with the exclusive right to use the Limited Common Elements appurtenant to such Unit and a non-exclusive right to use any General Common Elements. Any Unit may be jointly or commonly owned in any estate recognized under applicable law. The term "Unit" as used herein shall have the same meaning as the term "apartment" in the Act.

(rr) "**Unit Owner**" or "**Owner**" shall mean the party whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit. A Unit Owner or Owner shall be deemed the same as a "co-owner" under the Act.

2. **Submission of Project to the Act**. The Declarant does hereby submit and subject the Parcel and the Project to the provisions of the Act and does hereby establish a Planned Unit Development to be known as **PROXIMITY**.

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

5. **Association of Unit Owners; Voting Rights and By-Laws**.

(a) The Association has been or shall be formed pursuant to the provisions of the Nonprofit Corporation Act. The Association shall be the governing body for all Unit Owners and shall be operated to provide guidelines for the maintenance, repair, replacement, administration, and operation of the Project, as provided in the Act, this Declaration and the By-Laws. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and any funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners, in accordance with the provisions of the Act, this Declaration and the By-Laws.

(b) The Unit Owners shall be the members of the Association, with each Unit Owner holding a membership interest therein appurtenant to such Unit, subject to the provisions concerning voting hereinafter set forth. A Unit Owner's membership

shall automatically terminate when such Owner ceases to be a Unit Owner. Upon the conveyance or transfer of the ownership interest in a Unit to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association.

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

(d) If a Unit Owner is a corporation or partnership, the member of the Association for such Unit may be an officer, partner or employee of such Unit Owner.

(e) The voting rights in the Association shall be as set forth in the By-Laws, this Declaration, or any Supplemental Declaration.

(f) The By-Laws for the Association shall be the By-Laws attached to this Declaration as Exhibit C and made a part hereof. The Board shall be elected and shall serve in accordance with the provisions of the By-Laws. The fiscal year of the Association shall be determined by the Board and may be changed from time to time as the Board deems advisable.

6. **Board's Determination Binding**. In the event of any dispute or disagreement between any Unit Owners relating to the Project, or any questions of interpretation or application of the provisions of this Declaration or the By-Laws, the determination thereof by the Board shall be final and binding on each and all such Unit Owners.

7. **Ownership and Use of the Common Elements**.

(a) Ownership of the Common Elements shall be and hereby is vested in and transferred to the Association.

(b) Each Unit Owner shall have the right to the exclusive use and possession of the Private Elements and Limited Common Elements appurtenant to such Unit.

(c) Subject to the By-Laws and the Rules and Regulations, each Unit Owner shall have the right to use the General Common Elements in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such

right to use the General Common Elements shall extend not only to each Unit Owner, but also to the agents, servants, tenants, family members, customers, invitees, and licenses of such Unit Owner. Each Unit Owner's right of enjoyment in the General Common Elements shall be subject to:

(i) The right of the Association, as provided in the By-Laws or the Rules and Regulations, to suspend the enjoyment rights of any Unit Owner with respect to the General Common Elements for any period during which any Assessment owed by such Unit Owner remains unpaid and past due, and for such period as the Board considers appropriate for any infraction of the Rules and Regulations.

(ii) The right of the Association to diminish in any way or to dedicate or transfer all or any part of the General Common Elements to any public agency or authority for such purposes and subject to such conditions as may be agreed to by a Majority of the Unit Owners.

(iii) 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 Project.

8. **Allocated Interests and Common Expenses**.

(a) Subject to the provisions of Section 8(c) below with respect to the Commercial Unit Common Expense Assessment and other terms and provisions of this Declaration that expressly limit or otherwise address the rights, duties and responsibilities of the Commercial Unit, the undivided interest in the Common Elements, Common Expense liability and votes in the Association are allocated to each Unit as set forth in Exhibit D attached hereto. Except as specifically provided otherwise herein, each Unit Owner shall pay their share of Common Expenses in accordance with the pro rata share allocated to such Unit as shown on Exhibit D, with such pro rata share based upon the approximate square footage contained within each Unit. Assessments for Common Expenses shall be in such amounts and at such times as determined in the manner provided in the By-Laws. No Unit Owner shall be exempt from payment of Assessments for Common Expenses by waiver or non-use of enjoyment of the Common Elements, or by abandonment of such Owner's Unit.

(b) Each Owner, by acceptance of his or her Deed, is deemed to covenant and agree to pay all Assessments levied by the Association pursuant to this Declaration, whether or not such obligation is so expressed in such Deed. A budget for the first year of the Association, including contemplated monthly assessments (as described in the By-Laws) and special assessments (as described below) and a breakdown thereof shall be developed prior to the first sale of a Unit to an Owner. Each Unit shall be subject to the Assessments set forth in the initial budget or subsequently adopted Annual Budget (as provided in the By-Laws) when conveyed to a party other than Declarant, with Assessments being prorated as of the date of closing of the sale of

the Unit. Notwithstanding any other provision of this Declaration, no Assessments shall be levied against Units owned by the Declarant, its successors or assigns.

(c) Notwithstanding any provision herein to the contrary (including, without limitation, Section 8(a) and 8(b) above and Article IV, Section 2 of the By-Laws), the monthly assessment for Common Expenses levied against the Commercial Unit shall be the Commercial Unit Common Expense Assessment, as determined below. From and after the execution of this Declaration until adoption of the second Annual Budget by the Board of the Association (in accordance with Article IV, Section 2 of the By-Laws), the Commercial Unit Common Expense Assessment shall be equal to the Initial Commercial Unit Common Expense Assessment. At the time of the adoption of the second Annual Budget for the Association by the Board, the Commercial Unit Common Expense Assessment shall be adjusted (increased or decreased, as applicable) by the same percentage adjustment applicable to the monthly Assessments applicable to all other Units. For example purposes only, in the event that the monthly Assessment levied against each Unit (excluding the Commercial Unit) is increased by 2% pursuant to the Board's adoption of an Annual Budget, then the Commercial Unit Common Expense Assessment shall increase by 2% from the previous year's Commercial Unit Common Expense Assessment. Any adjustment of the monthly Assessment levied against each Unit (excluding the Commercial Unit) as a result of the adoption of an Annual Budget by the Board shall result in a similar percentage adjustment to the Commercial Unit Common Expense Assessment until the adoption of the next Annual Budget.

(d) Except as provided in this Section 8(d), the Declarant shall not be required to advance from its own funds any sums of money for maintenance, improvements, payment of Assessments or any other Common Expenses. Notwithstanding the foregoing, during the Declarant Control Period, with regard to any Private Elements upon which a Unit is proposed but not constructed or is being constructed or any Unit that has been completed and to which title has not been conveyed by Declarant (the "**Declarant Owned Units**"), the total aggregate assessment due with respect to all Declarant Owned Units shall be limited to the amount (the "**Shortfall**") by which (a) the aggregate amount of actual operating expenses from time to time required to be paid with respect to the Project exceeds (b) the amounts required to be paid by the Unit Owners other than Declarant for said actual operating expenses. For purposes of the foregoing calculation, in the event Declarant enters into a lease or installment contract for any Unit, then Declarant shall, as of the first day of occupancy under such lease or contract, be responsible for the payment of assessments on those Units on the same basis as any other Unit Owner as provided in this Declaration and, consequently, said Unit shall no longer be deemed to be a Declarant Owned Unit hereunder. Actual operating expenses shall mean those ordinary expenses attributable only to the period in question covering the maintenance and operation of the Project and shall not include capital expenditures, amounts set aside as a reserve for contingencies or replacements, prepaid items or inventory items to the extent attributable to subsequent periods. The foregoing amounts owed by Declarant for the Declarant Owned Units may be paid by Declarant on a monthly basis or, at its option, paid to the Association at the close

of each calendar year without interest. It is expressly understood and agreed that in no event shall Declarant's total obligation under this Section 8(c) with respect to Declarant Owned Units ever exceed the amount of assessment due from each of the Unit Owners other than Declarant multiplied by the number of Declarant Owned Units from time to time.

9. **Special Assessments; Start Up Assessment**. In addition to the annual Assessments for Common Expenses authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Elements, including fixtures related thereto, or for any repairs or replacements incurred in accordance with Section 14(b) hereof. Notwithstanding the foregoing, in light of the Commercial Unit's distinct and separate maintenance responsibilities and obligations as set forth in this Declaration, special assessments shall not be levied against the Commercial Unit except as set forth in Sections 14(d) or as otherwise expressly set forth in this Declaration.

Each Unit Owner (excluding the Commercial Unit Owner) who takes title to a Unit directly from Declarant shall pay to the Association at the closing of the purchase of such Unit a Start-up Assessment equal to the lesser of (a) two (2) months of the current monthly assessment pursuant to the initial budget or Annual Budget, as applicable, or (b) an amount established by the Board from time to time. Upon the closing of the sale of the Commercial Unit by the Declarant, the Owner of the Commercial Unit shall pay to the Association a Start-up Assessment in an amount equal to two (2) months of the Initial Commercial Unit Common Expense Assessment. The one-time Start-up Assessment, as applicable to the Commercial Unit and all other Units, shall be paid in the applicable amount in addition to and not a prepayment of the regular Assessments provided for above. All receipts for Start-up Assessments shall be applied to repayment of loans, if any, and thereafter may be applied to the budget or to reserves.

10. **Separate Real Estate Taxes**. Real estate taxes shall be separately taxed to each Unit Owner for such Owner's Unit, its Private Elements and the Owner's corresponding membership 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, but rather are taxed on the Project as a whole, then such taxes shall be paid by the Unit Owner as a Special Assessment in accordance with a reasonable proration thereof determined by the Association.

11. **Insurance**.

(a) The Association shall obtain liability insurance for the Common Elements in such amounts as the Board may determine, together with workmen's compensation insurance and other liability insurance as the Board may determine, insuring each Unit Owner, mortgagees of Record, if any, the Association, its officers, its Directors, the Board and the Declarant from liability. The Board shall retain in safekeeping the original of each such liability policy for six (6) years after the expiration date of the applicable policy.

(b) If the Common Elements contain improvements, the Association shall carry property insurance thereon against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under a Causes of Loss – Special Form policy or its equivalent, for the full replacement cost thereof, and against such other hazards and for such amounts as the Board may determine. Replacement cost shall be deemed the cost of restoring applicable portions of the Common Elements 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, as the trustee for the Unit Owners. The policy of property insurance should also contain, if possible, a waiver of subrogation rights by the insurer against the Unit Owners.

(c) The Association shall carry fidelity coverage covering officers, Directors and employees who handle or are responsible for handling Association funds. Such coverage shall be in such amounts as the Board may determine, but in no event less than one hundred fifty percent (150%) of the monthly operating expenses of the Association, and shall contain waivers of any defense based upon the exclusion of persons serving without compensation. The foregoing insurance shall not be required if there are no Association funds to be handled.

(d) The Association shall have authority to and may obtain such other insurance insuring the Project or insuring Directors, officers of the Association, and members of any committee appointed pursuant to the By-Laws 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. Such insurance shall be in such amounts, from such sources and in such forms as the Board may determine,

(e) Premiums for all insurance carried by the Association shall be deemed Common Expenses.

(f) Each Unit Owner shall be responsible for obtaining property insurance on such Owner's Unit (including the Unit's Private Elements) as well as any additions and improvements thereto. Each Unit Owner or Occupant, as applicable, shall be responsible for obtaining property insurance on the Unit Owner's or Occupant's Personal Property. In addition, in the event a Unit Owner desires to insure against personal liability, loss or damage beyond the extent that such liability, loss or damage would be covered by the insurance obtained by the Association as part of the Common Expenses, as above provided, said Unit Owner may, at such Owner's option and expense, obtain such additional insurance. The insurance provided by the Association shall be deemed primary with respect to matters occurring within the General Common Elements, and any additional insurance obtained by the Unit Owner shall be deemed supplemental. The insurance provided by the Unit Owner shall be deemed primary with respect to matters occurring within the Owner's Private Elements and the Limited Common Elements appurtenant to the Unit, and any additional insurance obtained by the Association shall be deemed supplemental.

12. **Certificate of Payment**. The Board shall, upon request, furnish to any person a certificate, signed by an officer of the Association, setting forth (a) whether or not all Assessments and any other charges with respect to a Unit have been paid; (b) the amount of the last Assessment; and (c) the amount of any sums that are past due. Such certificate shall be conclusive evidence of the payment of any amounts therein stated to have been paid; and except as set forth in the certificate, no other amounts are then due and payable.

13. **Damage and Reconstruction**.

(a) In the event of damage to or destruction of any of the Common Elements as a result of fire or other casualty covered by property insurance carried by the Association, the Board shall, in its sole and absolute discretion, determine and without intervention of any Unit Owner, arrange for the prompt repair and restoration of the damaged portions of the General Common Elements to substantially the same condition in which they existed prior to damage or destruction. Where the insurance proceeds are insufficient to cover the cost of such repairs and restoration to the General Common Elements, the deficit shall be a Common Expense. If the damage is to Limited Common Elements, the insurance proceeds shall be released to the Owners of the Units to which such Limited Common Elements are appurtenant, who shall thereafter be responsible for the repair and restoration of the same and funding any deficit if the insurance proceeds are not sufficient to complete such repair and restoration.

(b) In the event of casualty or loss, the Association shall not be responsible for the repair, replacement or restoration of any Unit (or any Private Element that is a part of such Unit), and each Unit Owner shall be responsible for obtaining property and liability insurance coverage on the Owner's Unit (including Private Elements), including any additions and improvements thereto.

(c) Each Unit Owner and Occupant shall be responsible for insuring its Personal Property, and in no event shall the Association be responsible for any damage thereto.

14. **Maintenance, Repairs and Replacements**.

(a) Subject to the provisions of Sections 14(b) –14(h), each Unit Owner, at the Owner's expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within and to (i) the Unit (including all Private Elements); and (ii) the Limited Common Elements appurtenant to the Unit in such condition, repair, confirmation and layout as at the date of original construction and in conformity applicable governmental regulations, codes and ordinances.

(b) With respect to all Units (except, however, the Commercial Unit), the Association shall provide for the maintenance, care, repair, and replacement of the following portions of the Units: the exterior landscaping (except such landscaping installed by, or on behalf of, the Unit Owner and such landscaping enclosed by a fence, if any), walkways, stairs, railings and porches located upon or about each Unit. The

Association also shall maintain the exterior of each Unit as follows: painting, maintenance, and nonstructural repair of exterior building surfaces as the Board shall deem necessary and proper, including roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, replacement of trim, caulking and other repairs to roof covers (to include the repair and replacement of all non-structural components of the roof of each Unit), and other miscellaneous repairs of a nonstructural nature. Such exterior maintenance shall not include glass surfaces (weather windows or sliding glass doors), air conditioning, heating or other HVAC equipment, storm doors, front or rear entry doors, garage doors, fences, screens, or patio covers. The balance of the improvements located on the respective Units shall be maintained by the Owner of the particular Unit involved. For the sole purpose of performing the exterior maintenance upon each Unit required by this Section 14(b), the duly authorized employees or agents of the Association shall have the right, after reasonable notice to the Owner, to enter upon any Unit and into any Unit at reasonable hours of any day. The Association shall not bear responsibility for any structural repairs or replacements to the exterior of building surfaces, including, without limitation, roofs, it being expressly understood that the structural repairs and replacements to exterior building surfaces, including, without limitation, roofs, shall be the responsibility of the Unit Owner pursuant to Section 14(a).

(c) With respect to the Commercial Unit, the Owner of the Commercial Unit shall be responsible for all maintenance, care, repair and replacement of the Commercial Unit and all Limited Common Elements relating thereto, including, without limitation, building improvements (interior and exterior), paved surfaces and areas including parking surfaces and walkways, landscaping and all areas and aspects of the Commercial Unit and the Limited Common Elements relating thereto.

(d) Notwithstanding the foregoing, if the need for exterior maintenance and repair of Units (including, without limitation, the Commercial Unit) by the Association as required by this section is caused by the willful or grossly negligent conduct or act of an Owner, his/her family, guest, invitees, or other Persons using or occupying his/her Unit with his/her express or implied permission, the cost of such repair or maintenance may be assessed against such Owner as a special assessment of this Declaration upon a finding by the Board, which shall be due and payable thirty (30) days from the date of notice thereof, such assessment to be collected and enforced as provided in this Declaration. Such special assessment shall not require the approval of any of the Unit Owners; provided, however, that any Owner against which any such assessment is levied shall be entitled to notice, a hearing at a time and place set by the Board in its sole discretion, and an opportunity to do the corrective work required (provided that the work is performed by a competent contractor mutually agreeable to both parties and in a manner and quality agreed to by the Board), prior to a special assessment being levied against such Owner in accordance with the provisions of this subsection.

(e) The Association shall be responsible for all maintenance of, repairs to and replacements within and to the General Common Elements. Without limiting the foregoing, the Association shall provide for the maintenance of all private

roadways, alleys, exterior parking areas and drives that are in the Project and reflected on the Plat, and shall provide for the maintenance of the following utility facilities (whether within General Common Elements or Limited Common Elements): (i) any and all utility service lines that are not within a Unit; (ii) all water and sanitary sewer service lines extending from the main to the Unit; and (iii) the storm water facilities installed for the Project by the Declarant, including, without limitation, underground storm water vaults, pipes, inlets, but excluding any gutters and downspouts exclusively applicable to a Unit.

(f) Notwithstanding anything to the contrary contained in this Declaration, the Association shall not be responsible for the maintenance, improvement, repair or replacement of any air conditioning condensers or any other heating or cooling related equipment serving exclusively a single Unit.

(g) Except as set forth below in this Section 14(c), the Association shall maintain and provide for common garbage collection areas and facilities at the Project, and may prescribe such regulations as are appropriate relating to the use and maintenance of such facilities. Trash, garbage and refuse collection at the Project shall be provided by private companies engaged by the Association. Services that are provided to the Project by Metro do not include trash, garbage or refuse removal. Notwithstanding the foregoing, the Commercial Unit shall be responsible, at the expense of the Commercial Unit, for the removal of trash, garbage and refuse from the Commercial Unit.

(h) If, due to the act or neglect of a Unit Owner, or any agent, servant, tenant, family member, invitee, licensee or household pet of the Unit Owner, damage shall be caused to another Unit (including any Private Element), any Limited Common Element appurtenant to another Unit, or any General Common Element, or if any maintenance, repair or replacement of any utility lines or other items serving a Unit is required (a "**Required Repair**") and necessitates any maintenance, repair or replacement of another Unit (or its Private Elements), or any Common Elements, then the Unit Owner whose act, neglect or Required Repair necessitated the other work shall pay for such damage, maintenance, repairs and/or replacements to the other Unit and the Common Elements, as applicable.

15. **Easements and Encroachments**.

(a) Joint and mutual easements hereby exist for the following:

(i) Any installation, maintenance, repair and replacement of any and all pipes, wires, conduits, or other utility lines running through or around any Unit, which facilities serve one or more Units and are part of the Common Elements.

(ii) Any portions of the Common Elements that may encroach upon any Unit or any Unit that may encroach upon any portion of the Common Elements or another Unit, so long as the encroachment continues. Said easement shall

also exist for the maintenance, repair and replacement of said encroachments.

(iii) Any part of a roof, eave, cornice and gutter that may encroach over or upon another Unit or the Common Elements as of final construction. Said easement shall also exist for the maintenance, repair and replacement of said encroaching elements.

(iv) Ingress and egress and maintenance in favor of any public utility providing utility services to the Units.

(v) Maintenance and repair of any Unit or the Common Elements.

(vi) Drainage for the Project, as initially constructed.

(b) Reasonable notice to access any Unit or any Limited Common Elements appurtenant thereto shall be given to the affected Unit Owner unless access is required due to emergency circumstances.

(c) The Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

(d) During the period of construction or sale by the Declarant, the Declarant, and its agents, employees and contractors shall be entitled to access, ingress and egress to and from the Project as may be required for purposes of completion of construction of the Project or sale of Units.

16. **Use and Occupancy Restrictions**. Subject to the provisions of the By-Laws:

(a) Except for (i) the Commercial Unit and (ii) the Live/Work Units referenced in Section 16(c) and 16(e), no part of the Project may be used for purposes other than private, single family housing and the related common purposes for which the Project was designed and as allowed by zoning laws. However, the foregoing restrictions as to residence shall not be construed in such manner as to prohibit a Unit Owner or Occupant from: (i) maintaining a personal professional library; (ii) keeping personal business or profession records or accounts at the Unit; (iii) handling personal business or professional telephone calls or correspondence from the Unit; or (iv) if the Unit Owner or Occupant is a professional or quasi-professional, using a Unit (not in violation of municipal zoning laws) as an ancillary or secondary facility to a professional or quasi-professional office established elsewhere. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions. Without limiting the foregoing, the Commercial Unit may be used for purposes and uses that are permitted uses under Metro's MUL-A zoning classification, excluding, however the prohibited uses that are listed in Exhibit E attached hereto

(b) Except for the Commercial Unit (with respect to which the terms of this Section 16(b) shall not apply), no Unit may be offered by a Unit Owner to the public at large for temporary transient accommodations; however, nothing in this Section shall prohibit a Unit Owner from leasing the Owner's Unit to a non-Owner (herein, a "Unit Tenant") for use as a residence so long as the following conditions are met with respect to such rental arrangement (herein, a "Unit Lease"):

(i) If an Owner shall desire to rent its Unit to a Unit Tenant, the Owner may be required by the Association to submit to the Association all of the following, in form and content satisfactory to the Association:

(A) An application for rental providing, among other things, the identity of the Unit, the name of the proposed Unit Tenant and occupants, the proposed term of the Unit Lease, and contact information for the Owner while not occupying the Unit;

(B) A copy of the proposed Unit Lease which must be for a term not less than one (1) month and must expressly advise the Unit Tenant that the Unit is subject to this Declaration and Bylaws and that the Unit Tenant is responsible for compliance with the Declaration and all other rules and regulations adopted by the Association from time to time;

(C) A copy of a background check on the prospective Unit Tenant and all occupants of the Unit provided with the written consent of the prospective Unit Tenant and that indicates no prior criminal convictions or any sex offender status or other matter reasonably objected to by the Association;

(D) Any reasonable fee charged by the Association for review of the application and other material; and

(E) Upon approval, a copy of the fully executed Unit Lease.

(ii) A failure to procure approval prior to leasing a Unit shall constitute a violation of this Declaration and, among other things, the Association shall be entitled to injunctive relief against such Owner and the Unit Tenant, the Owner acknowledging that legal remedies may not be adequate. The Owner shall be subject to all expenses of the Association resulting from any such violation, including, without limitation, reasonable attorney's fees and other costs of enforcement.

(iii) The Association may require any Owner to evict any tenant who fails to follow the rules for conduct within the Project as established by the Association from time to time.

(iv) The terms and provisions of this Section 16(b) shall be applicable to any sublease arrangement with respect to a Unit, it being expressly provided that the

sublease of any Unit shall be deemed a Unit Lease for purposes of this Section 16(b).

(c) With respect to the Live/Work Units, no more than the lesser of (i) twenty percent (20%) of the total floor area within the Live/Work Unit or (ii) six hundred twenty five (625) square feet of the total floor area within the Live/Work Unit shall be used for non-residential purposes. The non-residential purposes or uses that are permitted in a Live/Work Unit shall be any of the permitted uses under Metro's MUL-A zoning classification, excluding, however (i) the prohibited uses that are listed in Exhibit F attached hereto and (ii) with any other limitations that are set forth in this Declaration. The Occupant of a Live/Work Unit shall conduct permitted non-residential activities or uses only between the hours of 7:00 AM (Nashville, Tennessee) and 10:00 PM (Nashville, Tennessee), Sunday through Thursday, and between the hours of 7:00 AM (Nashville, Tennessee) and Midnight (Nashville, Tennessee), Friday and Saturday.

(d) Notwithstanding the foregoing, while the Declarant owns any of the Units and until each Unit is sold by it at a Residential Sale, the Declarant and its employees shall have the right to transact on the Project any business deemed necessary by Declarant to consummate the sale, lease or resale of such Units, including but not limited to showing unsold or unoccupied Units as a model Units, using one or more of such unsold or unoccupied Units as a sales, development or construction office, and maintaining customary signs in connection therewith.

(e) With respect only to Live/Work Units, the Owners or Occupants of Live/Work Units shall have the right to place signs meeting the following criteria (and which must otherwise comply with applicable zoning ordinances, including the SP Approval), without Board approval:

(i) No more than two signs may be placed outside a Live/Work Unit, and the signs must be located in the Permitted Signage Area;

(ii) The sign or signs shall not exceed a total area of fifty (50) square feet;

(iii) The sign or signs shall be made of any material that is not prohibited pursuant to applicable zoning ordinances; provided, however, that no sign that is made from plastic material shall be permitted; and

(iv) No sign or signs shall include or incorporate internal illumination; provided, however, that the foregoing shall not prohibit the utilization of neon signs.

17. **Enforcement**.

(a) In the event of any violation of the provisions of the Act, this Declaration, the By-Laws, or the Rules and Regulations by a Unit Owner, the Association shall have all of the rights and remedies that may be provided for in the Act, this Declaration, the By-Laws, the Rules and Regulations, or that may be available at law or in equity. Any violation by an Occupant of a Unit shall be deemed to be a violation by the

Unit Owner for all purposes hereunder. Said remedies shall include but are not limited to an action or other proceeding against such defaulting Unit Owner, the Occupant and/or others for the appointment of a receiver for the Unit and ownership interest of such Unit Owner, for damages, for injunction or specific performance, for judgment, for payment of money and collection thereof, for the right to take possession of the Unit and to sell the same as provided hereinafter in this Section, for any combination of remedies, or for any other relief.

(b) Further, in the event any Unit Owner:

(i) Fails to maintain such Owner's Unit (including its Private Elements) or the Limited Common Elements appurtenant to such Unit;

(ii) Fails to pay any Assessment when due; or

(iii) Violates or defaults under any other provision of the Act, this Declaration, the By-Laws or the Rules and Regulations

and if such failure, violation or default shall continue for ten (10) days after notice to the Unit Owner in writing from the Board or another Unit Owner, or shall occur repeatedly during any ten (10) day period after such written notice or request to cure such violation, the Board or such other Unit Owner shall have the right, in addition to any other rights provided for in this Declaration (a) to enter upon any portion of the Project upon which or as to which such violation or breach exists, and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, without the Board or such other Unit Owner, or its employees or agents, being deemed guilty in any manner of trespass; (b) to perform any required maintenance; (c) to advance and pay any past due amounts; or (d) to do any other reasonable act necessary to cure such default. In such event, the Association shall have a lien securing payment of all unpaid Assessments and all costs in connection with the foregoing, upon (1) the Unit; (2) the Unit's appurtenant interest in the Limited Common Elements; and (3) all of the Unit Owner's Personal Property (the "**Defaulting Owner's Property**").

(c) The Association shall be entitled to enforce any lien set forth herein by filing suit in a court of competent jurisdiction and obtaining an order that all the right, title and interest in the Defaulting Owner's Property shall be sold (subject to the lien of any existing and Recorded deed of trust) at a judicial sale upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the said defaulting Unit Owner from reacquiring such Owner's interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorney's fees, and all other expenses of the proceeding and sale, and all such items shall be assessed to the defaulting Unit Owner in said decree. Subject to the rights of any first mortgagee or holder of a recorded first deed of trust with respect to a Unit (as provided in subsection (d) of this Section 17 and Section 26 hereof), any balance of proceeds shall be applied to

any unpaid Assessments and other sums due hereunder, and any remaining amounts, shall be paid to the holder of the first lien on the Unit, or any other party entitled thereto. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Unit and the Unit Owner's corresponding rights with respect to the balance of the Defaulting Owner's Property, and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession. The purchaser shall take the interest in the Defaulting Owner's Property subject to the Act, this Declaration, the By-Laws and the Rules and Regulations.

(d) All sums due hereunder shall also be the personal obligation of the Unit Owner. A successor in title to a Unit shall not be personally obligated to pay any unpaid amounts that have been levied against a Unit unless such successor in title expressly assumes the payment of the same, provided, however, any lien encumbering a Unit as above described shall not be terminated by the transfer of such Unit to the successor. The lien set forth herein shall be subordinate to the lien of any Recorded deed of trust or first mortgage on the interest of such Unit Owner at the time such amounts were due and payable. The holder of any deed of trust that takes possession of the Unit encumbered thereby, forecloses on its deed of trust or accepts a deed-in-lieu of foreclosure for such Unit (i) shall not be liable for more than the most recent six (6) months of past due Assessments (which shall remain a lien on such Unit notwithstanding such foreclosure; and (ii) shall be liable for all Assessments and other sums that first become due and payable with respect to the Unit after the holder takes title thereto. This subsection shall not be amended, changed, modified or rescinded without the prior written consent of all deed of trust beneficiaries of Record.

(e) Any and all rights and remedies hereunder may be exercised at any time and from time to time, cumulatively or otherwise, by the Board or any Unit Owner.

(f) All expenses in connection with any actions or proceedings under this Section, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the Interest Rate, until paid, shall be charged to and assessed against such defaulting Unit Owner.

18. **Construction and Architectural Standards**.

(a) Construction Standards. With respect to Units constructed by the Declarant and the Commercial Unit (irrespective of whether it is constructed by the Declarant), Declarant, or the Owner of the Commercial Unit, as applicable, shall complete the original construction of the Units in accordance with the requirements of the City. With respect to any construction, alteration or improvements to a Unit (excluding, however, the Commercial Unit), after the Unit has been acquired by an Owner from the Declarant, no Person shall construct any Unit or other improvements upon a Unit, or after completion of such Unit or other improvements, make any modifications, additions or alterations to such Unit or any structure thereon or improvement thereto, without the prior written approval of the Board, which may

at its discretion establish a separate committee or body for such review. In no event shall the Board approve any plans violating the use restrictions set forth in this Declaration, the By-Laws or any architectural covenants that have been submitted to and approved by the City as set forth below (the "**City Requirements**").

(i) Review. The Board may establish from time to time the procedures for review of such modifications, additions or alterations, including without limitation submission requirements, including without limitation plans and designs, payments of review and other costs, and any architectural consultant requirements.

(ii) Drainage. All plans shall comply with and Owners shall be solely responsible for applicable drainage, water conservation, erosion control and storm water detention requirements. No alteration of existing grade or any planting, fences or other improvements that alter the flow of water shall be permitted without the express consent of the Board, which approval shall be for the exclusive benefit of the Declarant or Association, as applicable, and shall not remove or alter the responsibility of any Owner for compliance with such requirements.

(iii) Modifications. Modifications after completion of construction, or additions or changes to the approved plans during construction, must be reviewed and approved. However, review by the Board is not required to paint with originally approved materials and colors, or to replace the roof or other components with duplicates of the original material. Significant new landscaping, grading and any removal of trees or plants must be approved in advance.

(iv) Governmental Compliance. Owners are responsible for making sure that construction conforms to governmental regulations and all local building codes. If the Board notes noncompliance, the Owner will be required to make the necessary changes. However, the Board (or its designated review committee) is not responsible for compliance with governmental requirements.

(v) Notwithstanding the foregoing, it is the express intention of this Declaration that neither the construction of improvements to the Commercial Unit nor any modifications, additions or alterations thereto shall be subject to approval of the Board or any committee or body established for such review. All improvements to the Commercial Unit, together with any modifications, additions or alterations thereto, shall conform to all governmental regulations and applicable building codes.

(b) Enforcement.

(i) Fines. The Board may require the Owner to post a deposit from which the Board may deduct fines for failure to comply with the approved plans and

specifications, tree regulations and rules for contractor conduct. The collection of a fine shall not in any way diminish the available remedies at law or equity.

(ii) Suit Permitted. If any construction is begun that has not been approved or that deviates from approved plans and specifications, the Board, the Declarant or the Association may require the Owner to resolve the dispute through binding arbitration or may bring suit seeking damages, specific performance, declaratory decree and/or injunction, or any other remedy at law or in equity. The Board shall be empowered to bring suits on behalf of the Association. If suit is brought and the court finds that the construction was not approved or that the construction deviated from the approved plans or specifications, then the party bringing suit shall also be awarded reasonable attorney's fees, even if the relief requested is not granted.

(iii) Trees and Hedges. Improper cutting, removal, lack of care or intentional damage to existing trees and hedges may be subject to the imposition of fines plus a requirement that the tree be replaced with an approved species of comparable caliper, or, if approved by the Board, a combination of trees totaling the caliper of the removed tree, or that hedges be replaced with an approved hedge plant. Fines shall be set by the Board.

(iv) Drainage. After reasonable notice (except in an emergency), the Declarant or the Association shall have the right but not the obligation to enter onto a Unit, the Private Elements and/or the Limited Common Elements, and correct improper grading or other modification to the Unit which causes drainage problems. Such corrections shall be made at the cost and expense of the Owner of the Unit, who shall promptly reimburse the Declarant or the Association, as applicable. The Unit shall be subject to a lien for the cost if not paid. The Declarant or the Association, as applicable, shall not be required to repair or replace landscaping or other improvements after such action.

(v) No Waiver. Failure to enforce any provision of this Declaration shall not be deemed a waiver of the right to do so at any time thereafter.

(c) Liability. The Board and its inspectors are concerned primarily with aesthetic considerations, and are not responsible for compliance with governmental requirements or design or construction defects or use of materials affecting the safety or structural integrity of the Buildings. Approval by the Board of an application shall not constitute a basis for any liability of an architect, Declarant, the Directors or the Association for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements, or for the performance or quality of work of any builder or architect approved by it, or for non-compatible or unstable soil conditions or soil erosion, or any other condition of the Project.

19. **Declarant's Rights During Construction and Development of Phases**. The following rights are hereby reserved to and in favor of the Declarant:

(a) Unit Sales. So long as construction and initial sale of Units shall continue, it shall be expressly permissible for Declarant to construct, maintain and carry on upon portions of the Parcel, other than Units owned by persons other than Declarant, such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, Units, utilities, model units, and sales offices (either in existing Units or in a temporary or mobile building or structure), and the Declarant and its invitees shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned by the Declarant as models and sales offices. Declarant may further delegate all of the privileges set forth in this Section 19 to any contractor, builder or other party in the discretion of Declarant. This Section may not be amended without the express written consent of the Declarant.

(b) Withdrawal or Addition of Property. Declarant reserves the right to amend this Declaration, for the purpose of removing any portion of the Parcel that has not yet been improved with structures from the coverage of this Declaration or to add additional property to be subject to this Declaration by Supplemental Declaration. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Elements, the Association shall consent to such withdrawal. The inclusion of real property in the term "Project" or on Exhibit A to this Declaration shall not be deemed to obligate Declarant to acquire such real property or to include such property within the Parcel or the Project except in the sole discretion of Declarant.

(c) Development in Phases. Declarant intends to develop the Parcel and the Project in two or more Phases. Although the Declarant does not guarantee that the buildings reflected on the Plat will be constructed, construction of any buildings or improvements will be performed in accordance with applicable governmental regulations, codes and ordinances. The inclusion of any land in the definition of the Parcel shall not preclude the Declarant from exercising full control over such land until such time as a Plat shall be recorded submitting the land and the Parcel to specific Units or other improvements.

(d) Right to Transfer or Assign Declarant Rights. Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise any right reserved to Declarant in this Declaration as an agent, employee or contractor

of Declarant where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise. In the event Declarant ceases to act as Declarant and abandons its role as Declarant after the end of the Declarant Control Period, then the Association shall have and may exercise all rights of Declarant without the necessity of a written assignment by the Declarant that fulfilled Declarant's obligations prior to such transfer.

(e) Termination of Rights. The rights contained in this Section shall not terminate until the earlier of (a) forty (40) years from the date this Declaration is recorded; or (b) recording by Declarant of a written statement that all development and sales activity has ceased.

20. **Association's Right to Purchase at a Foreclosure Sale**.

(a) The Board shall have the power and authority to bid and purchase, for and on behalf of any Unit or interest therein, at a sale pursuant to a deed of trust or mortgage foreclosure, a foreclosure of the lien for any Assessment or other sums due hereunder, or an order or direction of a court, or at any other involuntary sale, upon the consent of all Unit Owners who are then current in the payment of all sums due hereunder. Such consent shall set forth a maximum price that the Board or its duly authorized agent may bid and pay for said Unit.

(b) The Board shall have the right to make such mortgage arrangements and special assessments proportionately among the respective Unit Owners and other such financing arrangements as the Board may deem desirable in order to close and consummate the purchase of a Unit or interest therein by the Association. However, no such financing arrangement may be secured by an encumbrance on any interest in the Project other than the Unit or interest therein to be purchased and the membership interest in the Association appurtenant thereto.

21. **Amendments**.

(a) During the Declarant Control Period, Declarant may unilaterally amend this Declaration subject only to the requirement that nothing in such amendment violate any requirement of any Federal Entity. Further, so long as Declarant owns any portion of the Project, Declarant may unilaterally amend this Declaration so long as such amendment is designed to comply with any law, regulation or provision of any Federal Entity. Declarant reserves the right and power, to be exercised without the consent of any Unit Owner or his mortgagee (subject to the provisions of Section 26 hereof), to make and Record a special amendment ("**Special Amendment**") to this Declaration and to the Plat at any time and from time to time which causes this Declaration or the Plat (i) to comply with requirements of any and all Federal Entities or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of

such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering a Unit, (iii) to correct clerical or typographical errors in this Declaration, the By-Laws or any Exhibit hereto or any supplement or amendment thereto, or (iv) to change or modify any of the terms or conditions of this Declaration and the Plat based upon Declarant's determination, made in good faith, that such change or modification is in the best interests of the Project and is consistent with the intent and purposes of this Declaration and the Plat. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to vote in favor of, make, execute and Record Special Amendments. The right of Declarant to act pursuant to rights reserved or granted under this Section 21 shall terminate at such time as Declarant no longer holds or controls title to any portion of the Project.

(b) In addition to the foregoing, during the Declarant Control Period, this Declaration may be amended by a sixty-seven percent (67%) affirmative vote of those Unit Owners present at any duly called meeting, and the written approval of the Declarant.

(c) Following the Declarant Control Period, the provisions of this Declaration may be amended by an instrument in writing, setting forth such amendment, signed by a Majority of the Unit Owners; provided, however, that all lien holders of Record have been notified by certified mail of such amendment, and an affidavit by the Secretary of the Association certifying to such mailing is made a part of such instrument. However, if the Act, this Declaration or the By-Laws require the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument amending any provision of this Declaration with respect to such action shall be signed by all Unit Owners and/or all lien holders or both as required by the Act or this Declaration. Whenever the approval of a lien holder is required hereunder, such approval shall be implied approval if the lien holder fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

(d) No provision of this Declaration may be amended so as to conflict with the provisions of the Act.

(e) Any permitted amendment to the Declaration shall only be effective upon the Recording of such instrument.

22. **Rights and Obligations**.

(a) Each grantee of Declarant, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration. All future Unit Owners and Occupants shall be subject to and shall comply with the provisions of this Declaration. Any restrictions or rules in the By-Laws that are more than administrative in nature such as, but not limited to, reservations and future rights of Declarant are hereby incorporated into and made a part of this Declaration by reference. All rights, benefits and privileges hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any party having at any time any interest or estate in said land, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

(b) All present and future Unit Owners and Occupants of Units shall be subject to, and shall comply with, the provisions of the By-Laws appended hereto and Recorded herewith, as they may be amended from time to time. The acceptance of a deed of conveyance, devise, or lease to a Unit, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the By-Laws, and any Rules and Regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Unit Owner or Occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any party 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.

23. **Condemnation**.

(a) In the event of a taking of part of the Common Elements in condemnation or by eminent domain, the award made for such taking shall be payable to the Association.

(b) If the taking applies to Limited Common Elements, the Board shall release the entire award to the Owners of the Units to which such Limited Common Elements are appurtenant.

(c) If the taking applies to General Common Elements, and a majority of the Board in their sole and absolute discretion approve the repair and restoration of such General Common Elements, the Board shall arrange for the repair and restoration of such General Common Elements, and the Board shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event the Board does not approve the repair and commence restoration of such General 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 to the Unit Owners in equal shares.

24. **Mortgages and Deeds of Trust**. Each Unit Owner shall have the right, subject to the provisions herein, to mortgage the Owner's Unit and all rights appurtenant thereto. No Unit Owner shall have the right or authority to mortgage or place a lien on any other portion of the Project.

25. **Federal Entity Regulations**. Notwithstanding anything to the contrary contained in this Declaration or in the By-Laws, all terms, conditions, regulations, and requirements that are now existing, or which may be amended from time to time by any Federal Entity, if any, pertaining to planned unit developments containing detached homes are hereby incorporated as terms and conditions of this Declaration and the By-Laws and such shall be governing upon the Project, Declarant, and the Association, so long as such terms or conditions are not inconsistent with the laws of the State of Tennessee as found in T.C.A., Section 66-27-101, et seq., as amended.

26. **Mortgagee Protections**. The following declarations shall be controlling over any terms of this Declaration or By-Laws which are in conflict therewith:

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

(b) Unless all of the first mortgagees (based upon one (1) vote for each mortgage owned) or Owners (other than the Declarant) 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 the percentage ownership of the Association may be reduced due to the addition of a Phase or Phases to the Planned Unit Development, if contemplated herein;

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

(iii) By act or omission seek to abandon the Planned Unit Development;

(iv) Encumber, sell or transfer the Common Elements, except for the granting of easements for public utilities or for other purposes consistent with the intended use of the Common Elements;

(v) Use property insurance proceeds for losses to the Project other than for the repair, replacement or reconstruction of such improvements, except as provided by T.C.A. Section 66-27-118;

(c) Unit Owner, first mortgage holders and insurers or guarantors of any first mortgage shall have the right to examine the books, records, current copies of this Declaration, the By-Laws and the Rules and Regulations during normal business hours and upon request;

(d) An adequate reserve fund for the maintenance, repair and replacement of the Common Elements that may be replaced on a periodic basis may be established and funded in accordance with any budget adopted in accordance with this Declaration;

(e) As set forth in T.C.A., Section 66-27-120, all taxes, assessments, and charges that may become liens prior to the first mortgage under the laws of the State of Tennessee shall relate only to the Unit and not to the Project as a whole;

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

(g) Any agreement for professional management of the property, whether it be by the Declarant, the Declarant's 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;

(h) During the Declarant Control Period, the Association shall not be bound, directly or indirectly, to contracts or leases unless the Association has the right to terminate the same upon not more than ninety (90) days' notice without penalty

(i) Upon written request, the Association shall give to any mortgagee of a Unit, any Federal Entity or any lending institution servicing such mortgages as are acquired by a Federal Entity, 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 Common Elements if such loss or taking exceeds Fifty Thousand ($50,000.00) Dollars, or of any other condemnation or casualty loss that affects either a material portion of the Project or the Unit subject to the mortgage or deed of trust, 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 "Mortgage of Units" as must be established pursuant to the By-Laws, for a list of mortgagees to be notified hereby;

(j) The interest of a first mortgagee in a mortgaged Unit shall be superior to the interests of any person, group, partnership, corporation, or entity of any kind, including any interest that the Association, the Declarant, or any Unit Owner may have in any portion of the Unit, 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, upon written request, is entitled to written notification from the Association of any default in the performance by the Unit Owner of any obligation under this Declaration or the By-Laws that is not cured within sixty (60) days; and

(m) The property and liability insurance and any 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."

27. **Notices**. Notices provided for in the Act, the Declaration or the By-Laws shall be in writing and shall be addressed to the Association, at 5202 Centennial Blvd., Suite 107, Nashville, Tennessee 37209, with a copy to Declarant at 425 Huehl Road, Building 18, Northbrook, Illinois, 60062, or at such other address or addresses as hereafter provided by the Association or filed with the Tennessee Secretary of State. The Association may designate a different address or addresses for notices to it by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof. Upon written request to the Board, the holder of any mortgage or trust deed of Record encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose Unit is subject to such mortgage or trust deed.

28. **RESERVED.**

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

30. **Perpetuities and Restraints on Alienation**. If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the Governor of Tennessee holding office as of the date of this Declaration.

31. **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.

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

33. **Legal Certificate**. Declarant hereby warrants the legal opinion required under the terms of the T.C.A., Section 66-27-103 has been issued and is attached to this instrument.

IN WITNESS WHEREOF, the undersigned has executed this Declaration this the 19th day of August, 2021.

DECLARANT

RSD Trinity Lane, LLC,
a Tennessee limited liability company

BY: Red Seal Development Corp., an Illinois corporation, ~~its Manager~~

By: _____
Name: Brian Hoffman
Title: President

STATE OF Illinois)
COUNTY OF Cook)

Before me, Shari Scheck, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared Brian Hoffman, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the President of Red Seal Development Corp., an Illinois limited liability company, the Manager of RSD Trinity Lane, LLC, a Tennessee limited liability company, the within named bargainor, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company as the Manager of RSD Trinity Lane, LLC by himself as Manager of the limited liability company.

WITNESS my hand and seal at office in Northbrook, IL, _____, on this the 19th day of August, 2021.

Shari Scheck
Notary Public

My Commission Expires:
9/25/24

OFFICIAL SEAL
SHARI SCHECK
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/25/24

SUBORDINATION OF DEED OF TRUST

REPUBLIC BANK OF CHICAGO ("Lender") hereby subordinates the lien of that certain Deed of Trust, Absolute Assignment of Rents, Security Agreement and Financing Statement dated as of September 30, 2020, and recorded as Instrument Number 20201001-0113684, Register's Office for Davidson County, Tennessee (the "Deed of Trust") and that certain Absolute Assignment of Leases and Rents dates as of September 30, 2020, and recorded as Instrument No. 20201001-0113685 (the "Assignment of Rents" and together with the Deed of Trust, collectively, the "Security Instruments"), to the foregoing Declaration, and all future amendment, modifications or supplemental declarations to the Declaration, including without limitation any Supplemental Declaration pursuant to which additional real property within the Development may be submitted to the Declaration (collectively, the "Declaration").

The Deed of Trust shall be considered a first deed of trust lien on the Parcel, as defined in the Declaration, but subordinate to the Declaration, as fully as if the Declaration (and any Supplemental Declarations) had been recorded prior to the Security Instruments. The lien of the Security Instruments are junior and inferior to that of the Declaration, and notwithstanding any foreclosure or enforcement of the Security Instruments, the Declaration shall continue to encumber the property described in the Security Instruments.

The priorities specified herein are applicable irrespective of the time or order of the attachment or perfection of any liens described herein or the time or order of recording the deeds of trust or declarations described herein, or the granting of or failure to give notice hereof.

Lender hereby warrants and represents to Declarant that Lender has not assigned, sold or transferred the Security Instruments, or any interest therein, to any person or entity.

[SIGNATURE PAGE TO FOLLOW]

The subordination granted herein shall he continuing, irrevocable and binding on Lender and its successors and assigns.

REPUBLIC BANK OF CHICAGO

By: _____, SVP
Print Name: Chris Norman
Title: Senior Vice President

STATE OF Illinois)

COUNTY OF Cook)

Before me, Marzena Szczyrek, a Notary Public of said County and State, personally appeared Gerald Norman, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the SVP Real Estate Banking of Republic Bank of Chicago, the within named bargainor, and that he as such _____ executed the foregoing instrument for the purposes therein contained, by personally signing the name of the banking corporation by himself as _____.

Witness my hand and seal, at Office in Oak Brook, Illinois, this 26th day of August, 2021.

M Szczyrek
NOTARY PUBLIC
My Commission Expires: 04/24/2025

OFFICIAL SEAL
M SZCZYREK
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 04/24/2025

EXHIBIT A

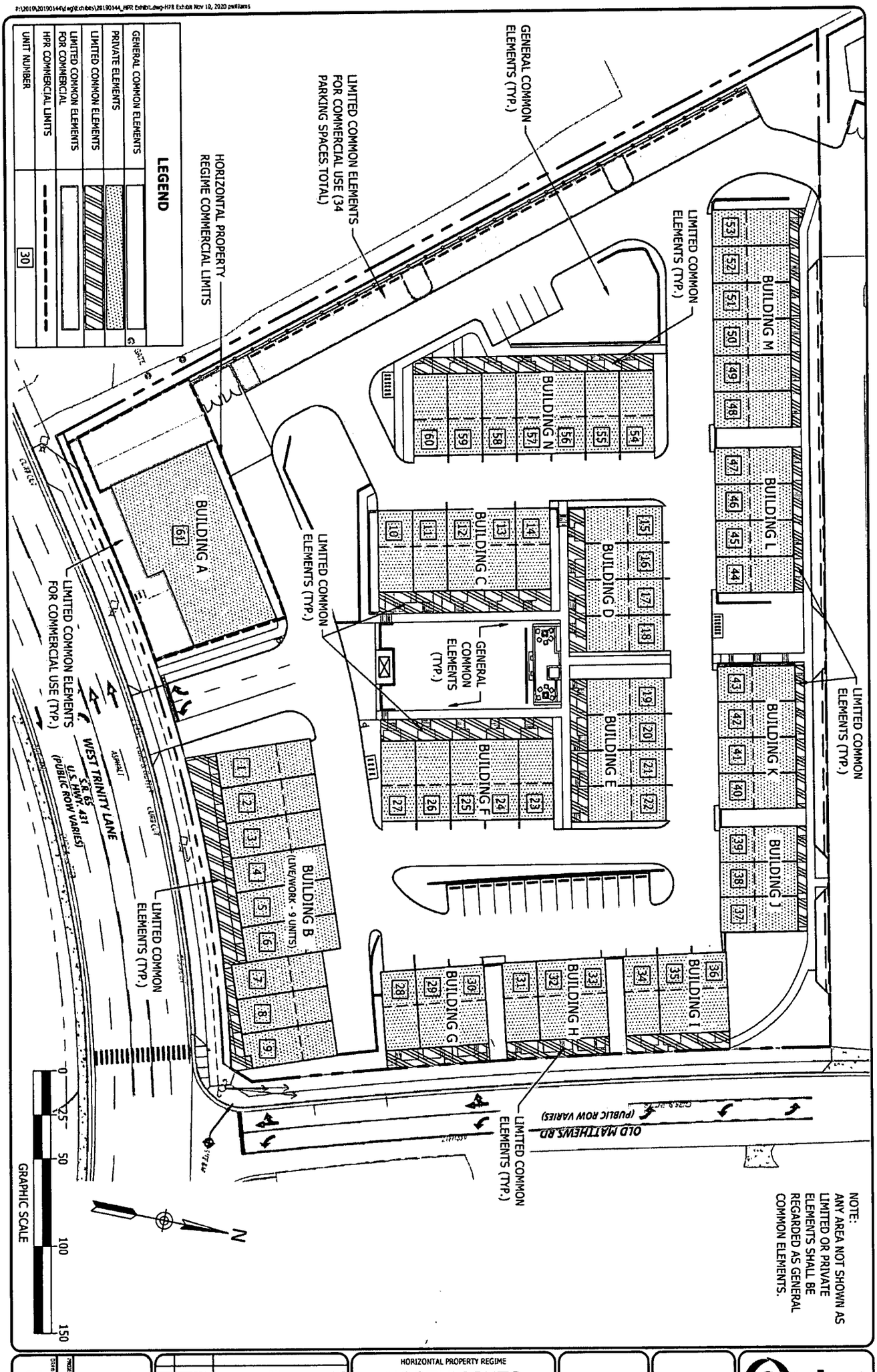
LEGAL DESCRIPTION

Land in Davidson County, Tennessee, being Lot(s) 1, as shown on the map entitled North Lights SP Final Plat, of record in Instrument No. 20200122-0007827, Register's Office for Davidson County, Tennessee, to which plan reference is hereby made for a more complete and accurate property description.

Being the same property conveyed to the Declarant by Deed of record at Instrument No. 20201001-0113683, said Register's Office.

EXHIBIT B

PLAT



HORIZONTAL PROPERTY REGIME

NORTHLIGHTS TOWNHOMES

515 W. TRINITY LANE
NASHVILLE, DAVIDSON COUNTY, TENNESSEENTY

RED SEAL HOMES
5703 CENTENNIAL BLVD. #107
NASHVILLE, TN 37209
847.417.5810

Catalyst DESIGN GROUP

NO.	DATE	DESCRIPTION
	2020-11-10	

DRAWING TITLE: HPR EXHIBIT

PROJECT NUMBER: 20190144

DRAWING NUMBER: HPR-1

EXHIBIT C

BY-LAWS OF

PROXIMITY HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

Members (Unit Owners)

Section 1. **Identity**.

(a) These are the By-Laws of PROXIMITY HOMEOWNERS ASSOCIATION, INC. (the "Association"), a nonprofit corporation incorporated under the laws of the Tennessee Nonprofit Corporation Act, Tennessee Code Annotated (the "**Nonprofit Corporation Act**").

(b) The Association has been organized for the purpose of serving as the "townhouse corporation" for the planned unit development horizontal property regime with private elements known as **PROXIMITY** (the "**Planned Unit Development**"), in accordance with that certain Declaration of Covenants, Conditions and Restrictions for PROXIMITY, a Planned Unit Development Horizontal Property Regime with Private Elements (as the same may be modified, amended or restated, the "**Declaration**"). All capitalized terms not otherwise defined herein shall have the meanings set forth in the Declaration.

Section 2. **Annual Meetings**. An annual meeting of the Unit Owners shall be held, subject to the terms hereof, on the date and at the time and place specified in the notice of such meeting sent by the Board. The Board shall call such meeting at least annually. All such meetings of Unit Owners shall be held within five (5) miles of the Project. Written notice of such meeting shall be delivered to all Unit Owners at least ten (10) days prior to the date of such meeting. At the annual meeting, the Unit Owners shall elect the Directors, receive reports on the activities and financial condition of the Association and transact such other business as may properly come before the meeting. The first annual meeting of the Unit Owners shall be held on a date to be established by Declarant in the calendar year following the year in which the first Unit has been sold.

Section 3. **Special Meetings**. Special meetings of Unit Owners may be called by the Board or a Majority of the Unit Owners. Special meetings shall be called by delivering written notice to all Unit Owners not less than ten (10) days prior to the date of the meeting, stating the date, time and place of the special meeting and the matters to be considered.

Section 4. **Delivery of Notice of Meetings**. Notices of meetings shall be delivered either personally or by mail to Unit Owners at the addresses given to the Board by Unit Owners for such purpose, or to a Unit Owner's Unit if no separate address for such purpose has been given to the Board.

Section 5. **Waiver of Notice**. A Unit Owner's attendance at a meeting waives objection to the lack of notice or defective notice of the meeting.

Section 6. **Voting**. The voting rights of each Unit shall be as set forth on Exhibit D to this Declaration. As further developments or Phases of the Project are subjected to this Declaration by Supplemental Declaration, the relative voting rights of each Unit Owner shall be accordingly adjusted, and it is anticipated that the relative voting rights of Unit Owners will decrease as additional Units are developed. All voting rights of each Unit must be voted as a single vote.

(a) In the event the Owner of a Unit is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. A Member or the Member's spouse, subject to the provisions of the Declaration and the By-Laws, may exercise the rights and privileges of membership;

(b) The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated by the Owner in a written instrument provided to the Secretary, subject to the provisions of the Declaration and the By-Laws; and

(c) In any situation in which more than one (1) Person holds the interest in a Unit required for membership, the vote for such Unit shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

Section 7. **Quorum**. Unless otherwise required by law, a quorum of Unit Owners for any meeting shall be constituted by Unit Owners represented in person or by proxy and holding at least twenty percent (20%) of the votes entitled to be cast at such meeting.

Section 8. **Voting Requirements**. Except as otherwise provided in these By-Laws, the Declaration, the Act or the Nonprofit Corporation Act, action on any matter voted upon at a meeting of the Unit Owners is approved if a Majority of the Unit Owners votes in favor of the action.

Section 9. **Action by Written Consent**. Action that 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 vote on the action are notified of the proposed action without a meeting. If no Unit Owner delivers a written notice to the Board objecting to acting without a meeting within ten (10) days following such notice, the affirmative vote of the number of votes that would be necessary to authorize or take such action at a meeting shall be the act of the Unit Owners. Such written consent (or counterpart(s) thereof) shall describe the action taken, be in writing, be signed by each Unit Owner voting on the action, indicate each signing Unit Owner's vote on the action and be delivered to the Secretary of the Association and included in the Association's records.

ARTICLE II

Board of Directors

Section 1. **Number, Election and Term of Office**.

(a) The Association shall be governed by the Board, which shall be composed of five (5) individuals, with one (1) of the Directors on the Board being appointed by the Owner of the Commercial Unit and one (1) of the Directors on the Board being elected by the nine (9) Owners of the Live/Work Units as the representative of the Live/Work Units.

(b) Directors shall be elected at the annual meeting of the Unit Owners by vote of the Unit Owners as hereinafter provided, except that the Declarant shall appoint interim Directors (the "**Interim Directors**") until the first annual meeting of the Association. At the first annual meeting and at each annual meeting thereafter, Directors shall be appointed or elected as follows:

(i) Until the expiration of the Declarant Control Period, the Declarant may appoint and remove the officers and Directors;

(ii) Declarant may voluntarily surrender the right to appoint and remove officers and Directors before termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective;

(iii) Not later than one hundred twenty (120) days after conveyance of twenty-five percent (25%) of the Units that may be created in the Project to Unit Owners other than Declarant, at least one (1) member of the Board must be elected by Unit Owners other than Declarant;

(iv) Not later than the termination of the Declarant Control Period, the Unit Owners shall elect a Board of Directors having either three (3) members or five (5) members. Directors shall be elected by all Unit Owners in accordance with their percentage voting rights. After the termination of the Declarant Control Period, all Directors shall be Unit Owners. The Board shall elect the officers. The Board and officers shall take office upon election. At the initial election of Directors by Unit Owners, the terms of such Directors shall be set so that the terms of all Directors do not end on the same year

(v) At all times the Board shall include at least one Director selected by the Owner of the Commercial Unit and one Director as the representative of the Live/Work Units, as provided in Article II, Section 1(a) above.

(c) Except for Interim Directors, each Director shall hold office for the term of two (2) years and until each Director's successors shall be elected.

Section 2. **Qualification**. Except as provided in Section 1, each Director must be a Unit Owner or the spouse of a Unit Owner. Should any Unit Owner Director transfer title to the Owner's Unit, the Board shall fill the transferring Unit Owner's Director seat, for the remainder of such Director's term, in accordance with the process for filling vacancies as

provided in Section 3 below. If any Director shall cease to meet the qualifications of serving as a Director during the Director's term, the Director shall thereupon cease to be a Director and such Director's place on the Board shall be deemed vacant.

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

Section 4. **Meetings**. A regular annual meeting of the Board shall be held following the regular annual meeting of Unit Owners. Special meetings of the Board shall be held upon call by the President or by a majority of the Board. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Board without a meeting.

Section 5. **Notice of Meetings**. Regular meetings of the Board may be held without notice of the date, time, place or purpose of the meeting. Special meetings of the Board must be preceded by at least two (2) days' notice to each Director of the date, time and place, but not the purpose, of such special meeting.

Section 6. **Waiver**. A Director's attendance at a meeting shall constitute the Director's waiver of notice of said meeting.

Section 7. **Removal**. Any non-Unit Owner Director may be removed from office with or without cause by the vote of a Majority of the Unit Owners at any special meeting that is specifically called for that purpose.

Section 8. **Compensation**. Directors shall receive no compensation for their services as Directors, unless expressly provided for in resolutions duly adopted by all of the Unit Owners.

Section 9. **Quorum**. Twenty percent (20%) of the Directors shall constitute a quorum.

Section 10. **Action by Written Consent**. Action that is required or permitted to be taken at a meeting of the Board may be taken without such a meeting if all of the Directors are notified of the proposed action without a meeting. If no Director delivers a written notice to the other Directors objecting to acting without a meeting within five (5) days following such notice, the affirmative vote of the number of votes that would be necessary to authorize or take such action at a meeting shall be the act of the Board. Such written consent (or counterpart(s) thereof) shall describe the action taken, be in writing, be signed by each Director voting on the action, indicate each signing Director's vote on the action and be delivered to the Secretary of the Association and included in the Association's records.

Section 11. **Powers and Duties**. The Board shall have the following powers and duties:

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

(b) To administer the affairs of the Association and the Project;

(d) To engage the services of an agent (hereinafter sometimes called the "**Managing Agent**") to maintain, repair, replace, administer, and operate the Project or any part thereof for all Unit Owners, upon such terms and for such compensation and with such authority as the Board may approve;

(a) To formulate policies for the administration, management and operation of the Project;

(b) To adopt Rules and Regulations, with written notice thereof to all Unit Owners, governing the administration, management, operation and use of the Project, and to amend such Rules and Regulations from time to time and, by unanimous vote of the Board, to establish reasonable financial assessments for infractions thereof;

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

(d) 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 Project, 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);

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

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

(g) To fix the estimated Annual Budget, and to provide the manner of assessing and collecting from Unit Owners their respective shares of such estimated expenses, as hereinafter provided;

(h) To borrow money for the purpose of repair or restoration of Common Elements;

(i) To secure insurance policies as required or permitted by the Declaration;

(j) Unless otherwise provided herein or in the Declaration, to comply with the instructions of a Majority of Unit Owners as expressed in resolutions duly adopted at any annual or special meeting of Unit Owners;

(k) To be responsible for and maintain any items or services that are classified as Common Elements in the Declaration; and

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

Section 2. **Power to Take Any Action**. Whenever in these By-Laws the Association is given the power to take any action, it is the intention of these By-Laws that the Board shall

act for the Association in all cases, except and to the extent that it is expressly provided that action be taken upon a vote of the Unit Owners.

Section 3. **Management Agreement**. Any Managing Agent that is engaged by the Association must be engaged pursuant to a written agreement (the "**Management Agreement**"). The cost of the Managing Agreement shall be a Common Expense. Any Managing Agent that handles Association funds shall be required to maintain fidelity bond coverage on its employees handling Association funds.

Section 4. **Non-Delegation**. Nothing in these By-Laws shall be considered to grant to the Board, the Association, or to the officers of the Association, any powers or duties that, by law, have been delegated to Unit Owners.

ARTICLE III

Officers

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

(a) A President, who shall be a Director, who shall preside over meetings of the Board and of Unit Owners, and who shall be the chief executive officer of the Association;

(b) A Secretary, who shall keep the minutes of all meetings of the Board and of Unit Owners, and who shall, in general, perform all the duties incident to the office of Secretary;

(c) A Treasurer, who shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported; and

(d) Such additional officers as the Board shall see fit to elect.

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

Section 3. **Term of Office**. Each officer shall hold office for the term of one (1) year and until the officer's successor shall have been appointed or elected and qualified.

Section 4. **Vacancies**. Vacancies in any office shall be filled by the Board by a majority vote of the members thereof at a special meeting of the Board. Any Director so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer the Director succeeds.

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

ARTICLE IV

Assessments

Section 1. **Annual Budget**. The Board shall establish an annual budget (the "Annual Budget") to provide for the needs of the Project. Such budget shall take into account the estimated Common Expenses and cash requirements for the year, including, but not limited to, salaries, wages, payroll taxes, legal and accounting fees, working capital fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power and all other Common Expenses. The estimated Annual Budget for each fiscal year shall be approved by the Board, and copies thereof shall be furnished by the Board to each Unit Owner not later than thirty (30) days prior to the beginning of such year.

Section 2. **Assessments**. On or before the first day of the first month and of each succeeding month of the year covered by the Annual Budget, each Unit Owner shall pay, as such Owner's respective monthly Assessment for the Common Expenses and other items for which Assessments are permitted under the Declaration, one-twelfth ($1/12^{th}$) of such Owner's share thereof as shown in the Annual Budget. Except for Shortfalls occurring during the Declarant Control Period which shall be paid as provided in Section 8(c) of the Declaration, in the event the Board fails to approve an estimated Annual Budget or to determine new monthly assessments for any year, or shall be delayed in so doing, each Unit Owner shall continue to pay each month the amount of such Owner's respective monthly assessment as last determined until a new assessment is established by the Board, at which time the Unit Owner shall be responsible to pay any Shortfall needed to pay in full the adjusted monthly assessments established by the Board for such year for the months prior to the date the new annual assessments for such year are established. Each Unit Owner shall pay such Unit Owner's monthly assessment on or before the first day of each month with such payment being directed to the Board, the Managing Agent, if any, or as may otherwise directed by the Board. Notwithstanding the foregoing, the monthly Assessment to be paid by the Owner of the Commercial Unit shall be the Commercial Unit Common Expense Assessment, as provided in Section 8 of this Declaration.

Section 3. **Annual Report**. Within ninety (90) days after the end of each fiscal year covered by an Annual Budget or as soon thereafter as shall be practicable, the Board shall furnish to each Unit Owner and to any other party required by the Declaration a statement for the year so ended showing the receipts and expenditures and such other information as the Board may deem desirable.

Section 4. **Lien**. It shall be the duty of every Unit Owner to pay the Owner's share of the Common Expenses and other Assessments as provided in the Declaration, and as assessed in the manner therein provided. If any Unit Owner shall fail or refuse to make any such payment when due, such delinquent payment shall be subject to a late charge in an amount established by the Board, and such delinquent payment shall also bear interest at the Interest Rate set forth in the Declaration. Such delinquent payment, together with penalty and interest, shall constitute a lien, as provided in the Act and the Declaration, enforceable by the Board, on the Defaulting Owner's Property as provided in the Declaration.

Section 5. **Records and Statement of Account**. The Board shall cause to be kept detailed and accurate records in chronological order of expenditures by the Association affecting the Project, specifying and itemizing the Common Expenses so incurred.

Section 6. **Discharge of Liens**. The Board may cause the Association to discharge any mechanic's lien or other encumbrances that in the opinion of the Board may constitute a lien against the Project or any part thereof other than a particular Unit. When less than all the Unit Owners are responsible for the existence of any such lien, only those Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorney's fees, incurred by reason of such lien.

Section 7. **Holding of Funds**. All funds collected hereunder shall be held and expended for the purposes designated herein and (except for such special assessments as may be levied hereunder against less than all of the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessment) shall be deemed to be held for the benefit, use and account of all of the Unit Owners.

Section 8. **Association Records**. The Association shall keep as permanent records minutes of all meetings of its Unit Owners and Board of Directors, a record of all actions taken by the Unit Owners or Board of Directors without a meeting and all appropriate accounting records.

Section 9. **Records at Principal Office**. The Association shall keep at all times a copy of the following records at its principal office:

(a) The Association's Charter and all amendments thereto;

(b) These By-Laws and all amendments hereto;

(c) Resolutions adopted by the Board relating to the characteristics, qualifications, rights, limitations, and obligations of Unit Owners or any class or category of Unit Owners;

(d) The minutes of all meetings of Unit Owners and the records of all actions taken by Unit Owners without a meeting for the past three (3) years;

(e) All written communications to Unit Owners generally within the past three (3) years, including the past three (3) years' annual financial statements;

(f) A list of the names and business or home addresses of its current Directors and officers;

(g) The most recent annual report delivered to the Tennessee Secretary of State; and

(h) The Declaration and all amendments thereto.

ARTICLE V

Use and Occupancy Restrictions

Section 1. General.

(a) No unlawful, noxious or offensive activities shall be carried on in any Unit or elsewhere on the Project, 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.

(b) Subject to the terms and provisions of Section 14 of the Declaration, each Unit Owner shall maintain such Owner's Unit in good condition and in good order and repair, at such Owner's expense, and shall not do or allow anything to be done in such Owner's Unit that may increase the cost or cause the cancellation of any insurance carried by the Association on the Project or carried by other Unit Owners on their Units.

(c) No Unit Owner shall display, hang, store or use any clothing, sheets, blankets, laundry, or other articles outside such Owner's Unit, or which may be visible from the outside of such Owner's Unit (other than draperies, curtains, or shades of a customary nature and appearance and flags as otherwise permitted herein, subject to the Rules and Regulations), or paint or decorate or adorn the outside of such Owner's Unit, or install outside such Owner's Unit any canopy or awning, or Citizens Band radio transmitters, neon signs, or other equipment, fixtures or items of any kind unless the same shall be in keeping with the quality of the Project and Units as originally constructed.

(d) No exterior radio, television, microwave, or other antennae, antennae dish, or signal capture or distribution device shall be permitted outside any Unit except to the extent such prohibition is not permitted by applicable law. The Declarant or the Association may establish one or more exterior audio, television, microwave, other antennae or antennae dish, or signal capture and distribution devices as Common Elements for the Project.

(e) The foregoing restrictions as to use and occupancy shall not be construed to prohibit a Unit Owner from placing and maintaining outdoor furniture and decorative foliage of a customary nature and appearance on a patio or deck that is a Private Element.

(f) Holiday decorations within and on the exterior of Units and on Units are permitted, subject to the following: (i) No decoration that includes lights or sound may constitute a nuisance or undue interference with the quiet enjoyment of neighbors, as determined by the Board or the Managing Agent on behalf of the Board. In making such determination, the Board may reasonably consider such factors as sound level, flashing or strobe lighting effects, and the offensive nature of decorations to a reasonable person; (ii) no display with illumination or sound may remain on past 11:00 p.m. or such other time limit as may be established by the Board from time to time; and (iii) no decoration shall remain on display or be visible

from the exterior of the Unit, whether illuminated or not, for more than fifteen (15) days after the holiday event. The Board shall have the authority to establish such dates in the event of any question.

(g) Except for permitted signs with respect to Live/Work Units as set forth in the Declaration, no Unit shall display, hang, store or use any signs or flags outside such Owner's Unit or which may be visible from the outside of such Owner's Unit (except for special events or sports flags for no longer than 48 hours at a time or as otherwise expressly permitted under the Board's Rules and Regulations) without the prior written permission of the Board or the written permission of the Managing Agent, acting in accord with the Board's discretion. So long as Declarant owns any Units, the Declarant shall not require Board approval for signage it deems necessary for the marketing of the Project. Notwithstanding the foregoing, a Unit Owner may display the flag of the United States of America provided such flag is appropriately illuminated and is no larger than a standard size customarily used for residential purposes, as determined by the Board in its discretion.

(h) Except for rights reserved by the Declarant pursuant to Section 19 of the Declaration with respect to temporary structures used for sales or other purposes, no structure of a temporary character, trailer, motor home, boat, tent, shack, garage, barn, or other out-buildings shall be permitted on the Project at any time, temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the Buildings or any portion thereof.

(i) No animals, reptiles, rodents, livestock, birds, or poultry of any kind shall be raised, bred or kept in or on any Units, except that a maximum of two dogs, cats or such other household pets approved by the Association (or a combination thereof not to exceed a total of two pets) may be kept in a Unit, provided such pets are not kept, bred or maintained for any commercial purposes and provided that no aggressive breeds of dogs may be kept, as determined by the Board from time to time. Notwithstanding the foregoing, no household animal may be kept in or about any Unit if such keeping results in an annoyance or is obnoxious to residents in the vicinity. In any event, each Owner shall be absolutely liable to all remaining Owners, their families, guests, invitees and tenants and to the Association for any and all damage to person or property caused by any pets brought or kept in or upon any Unit or on the Common Elements by any Owner or by members of its family, guests or invitees. Each Owner shall be responsible for cleaning up after its pet. No pet may be off-leash when not within the Owner's Unit, except to the extent that the Association maintains designated off-leash areas. The Board shall determine conclusively, in its sole and absolute discretion, whether, for the purpose of this subparagraph (i) an animal is appropriately considered as a household pet or not; and (ii) whether any household pet is a nuisance and therefore to be removed from the Project. The Board may permit variances to the restrictions set forth in this subsection in the Board's sole discretion; provided only that the Board treat similarly situated Owners in a similar manner. The Board may further establish rules and regulations for control of animals and household pets, and may impose fines for violations in addition to requiring removal of animals from the Project.

(j) Every garage door shall be equipped with a remote-controlled garage door opener, and every garage door shall be kept closed except when the garage is being entered or exited or for so long as a Person is present in the garage. All driveways shall be paved with a hard-surfaced material in accordance with the construction and architectural requirements of the Association and in compliance with the SP Approval.

(k) Trash, garbage and other waste shall be kept only in sanitary containers, and shall be disposed of in a clean and sanitary manner as prescribed from time to time in the Rules and Regulations of the Board.

(l) Articles of Personal Property, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall not be stored in the front of the Units. Storage of boats, trailers, campers, and motor homes on the Project shall not be permitted, unless said items are not visible from the street or unless written permission is obtained by the Board.

(m) Parking shall be in the areas so designated to each Unit as prescribed herein, subject to the Rules and Regulations and the SP Approval.

(n) Each Owner shall pay any real and personal property taxes or charges assessed against his respective Unit and the utility charges for said Unit.

(o) No Owner shall permit any thing or condition to exist upon any portion of such Owner's Unit that shall induce, breed, or harbor infections, plant diseases, vermin or noxious insects.

(p) The Board shall have the right of inspection and entry onto Units in order to perform the duties and obligations of the Board under this Declaration and under the By-Laws. In addition, the Declarant, the Association, and their designees shall have the right to enter upon a Unit for the purpose of cutting grass, hedges and shrubbery and providing maintenance agreed upon with the Owner thereof.

(q) The use of storage areas shall be subject to the Rules and Regulations.

(r) Any drapes or window treatments in any Unit which can be seen from the exterior of a Unit shall be lined or backed with material which is white, off-white or neutral so that no other color other than those set forth above can be seen on the window treatment from the exterior, except as may be approved by the Association or the Board.

(s) No Unit Owner shall overload the electrical wiring in a Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

Notwithstanding the foregoing, it is the express intention of the Declarant that in the event of any inconsistency between the terms, provisions, restrictions and conditions of this Article V, Section 1 of the By-Laws and the terms and provisions of Section 16 of the Declaration, that the terms and provisions of Section 16 of the Declaration shall be controlling.

Section 2. **Architectural Control with Respect to Units Excluding the Commercial Unit**. Subject to the architectural control provisions set forth in the Declaration (and the rights reserved to Declarant therein):

(a) Any Unit Owner may make alterations, additions or improvements within the Owner's Unit (including the Private Elements) and the Limited Common Elements appurtenant to the Unit without the prior written approval of the Board, but such Unit Owner shall be responsible for any damage to other Units or the other Common Elements or any part thereof, resulting from such alterations, additions or improvements.

(b) Any alteration and/or maintenance made by a Unit Owner to the exterior of the Owner's Unit shall be in conformity to the architectural design and scheme of the Unit as of the date of the Declaration and shall be the same quality of the Units as originally constructed. However, there shall be no alterations to the exterior of the Units until all Units are sold by the Declarant.

(c) Each Unit Owner, at the Owner's own expense, shall furnish and be responsible for all decorating and maintenance pertaining to the Owner's Unit (including the Private Elements) and the Limited Common Elements appurtenant to the Unit, as may be required from time to time.

(d) Except for Supplemental Planting Areas which shall be maintained by the applicable Unit Owner, all landscaping/grass cutting within the Limited Common Elements shall be maintained by the Association as a Common Expense, and landscaping areas shall be weeded and mulched by the Association as a Common Expense as necessary in order to maintain appropriate curb appeal for the Project. Each Unit Owner shall be responsible for the maintenance, including weeding and mulching, of a Supplemental Planting Area associated with such Unit Owner's Unit.

(e) No fencing shall be allowed unless approved by the Board.

The terms and provisions of this Section 2 shall not be applicable to the Commercial Unit.

Section 3. **Rules and Regulations**. Unit Owners shall be subject to such further restrictions as may be contained in the Rules and Regulations concerning the use of Units and the Common Elements which may be enacted from time to time by the Board. Such Rules and Regulations shall be binding rules and regulations of the Association and copies of such Rules and Regulations and any amendments or additions thereto shall be furnished to all Unit Owners upon request.

ARTICLE VI

Contractual Powers

Section 1. **Affiliates**. No contract or other transaction between the Association and one (1) or more of its Directors, or between the Association and any corporation, firm or

association in which one (1) or more of the Directors of the Association are directors, or are financially interested (an "**Affiliate**"), is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof that authorizes or approves the contract or transaction with the Affiliate or because the votes of the Directors with an interest in the Affiliate are counted, if the circumstances specified in either of the following subparagraphs exists:

(a) The fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes and the Board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of the Director or Directors with an interest in the Affiliate; or

(b) The contract or transaction is just and reasonable as to the Association at the time it is authorized or approved.

Section 2. **Quorum**. Directors with an interest in the Affiliate may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction with the Affiliate.

ARTICLE VII

Amendments

During the Declarant Control Period, these By-Laws may be amended or modified by the Declarant, and thereafter by action or approval of a majority of the Unit Owners in the same manner as amendments to the Declaration as set forth in Section 21(c) of the Declaration, but subject, however, to the limitations on amendments that require the consent of the Mortgagees or Declarant as set forth in the Declaration. Any amendment shall not become effective until Recorded.

ARTICLE VIII

Indemnification

Section 1. **General**. To the extent permitted by law, the Association shall indemnify and hold harmless each of its Directors and officers, each member of any committee appointed pursuant to these By-Laws, against all contractual and other liabilities to others arising out of contracts made by, or other acts of such Directors, officers, or committee members on behalf of Unit Owners, or arising out of their status as Directors, officers, or committee members, unless any such contract or act shall have been made fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit, or proceeding, whether civil, criminal, administrative or otherwise, in which any such Director, officer or committee member may be involved by virtue of such person's being or having been such Director, officer, or committee member, provided, however, that such indemnity shall not be operative

with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such Director, officer, or committee member; or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person's being adjudged liable for gross negligence or fraud in the performance of his duties as such Director, officer or committee member.

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

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

Section 4. **Miscellaneous**. The Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Article; provided, however, that the liability of any Unit Owner arising out of any contract made by or other acts of the Directors, officers, or members of such committees, or out of the aforesaid indemnity in favor of the Directors, officers, or members of such committees, shall be limited to such proportion of the total liability hereunder as said Unit Owner's percentage of Assessments for Common Expenses bears to the total Common Expenses. Every agreement made by the Directors, officers, or members of such committees, or by the Managing Agent on behalf of Unit Owners shall provide that the Directors, officers, members of such committees, or the Managing Agent, as the case may be, are acting only as agents for Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as the Owner's percentage of Assessments for Common Expenses bears to the total Common Expenses. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association, or disinterested members of the Board or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to a person or entity who has ceased to be a member of the Board, officer of the Association, or a member of such committee, and shall inure to the benefit of their heirs, executors, administrators, successors, and assigns of such person or entity.

ARTICLE IX

Miscellaneous

Section 1. **Notices**. Whenever notice is required to be given to Unit Owners, Directors, or officers, unless otherwise provided by law, the Declaration, the Charter, or these By-Laws, such notice may be given in person or by telephone, telegraph, mail, or private carrier. If such notice is given by mail, it shall be sent postage prepaid by first class United States mail or by registered or certified United States mail, return receipt requested, and addressed to the respective address which appears for each such person on the books of the Association. Written notice sent by mail to Unit Owners shall be deemed to have been given when it is mailed. Any other written notice shall be deemed to have been given at the earliest of the following:

(a) When received;

(b) Five (5) days after its deposit in the United States mail if sent first class, postage prepaid; or

(c) On the date on the return receipt, if sent by registered or certified United States mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

Section 2. **Waiver of Notice**. Whenever any notice is required to be given under the provisions of any statute or of the Declaration, the Charter, or these By-Laws, a waiver thereof in writing signed by the person entitled to such notice, whether before or after the date stated thereon, and delivered to the Secretary of the Association and included in the minutes or corporate records, shall be deemed equivalent thereto.

Section 3. **Negotiable Instruments**. All checks, drafts, notes, or other obligations of the Association shall be signed by such of the officers of the Association or by such other person(s) as may be authorized by the Board.

Section 4. **Deposits**. The monies of the Association may be deposited in the name of the Association in such bank(s) or financial institution(s) as the Board shall designate from time to time and shall be drawn out by check signed by the officer(s) or person(s) designated by resolution adopted by the Board.

ARTICLE X

Mortgages

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

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

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

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

Section 5. **Interest of Valid First Mortgagee**. If the first mortgagee has incorporated the terms of these By-Laws and the Declaration in its deed of trust, then said first mortgagee may at its option declare a default in its deed of trust by reason of any default hereunder, and may proceed to enforce its rights according to the terms of the deed of trust notwithstanding any enforcement instituted by the Board.

Section 6. **Notice Address**. Notice to mortgagees shall be deemed properly given when sent to the last addressed supplied by the mortgagee to the Association.

ARTICLE XI

Conflicts

These By-Laws are set forth to comply with the requirements of the Act and the Nonprofit Corporation Act, as they may be amended from time to time, and to allow the By-Laws to control in specific situations where such law allows. In the event any of the By-Laws conflict with the provisions of said statutes or of the Declaration, the provisions of said statutes or of the Declaration, as the case may be, shall control.

EXHIBIT D

Schedule of Unit Owner Voting Rights and Allocated Interests

UNIT No.	Percentage Interest in Common Elements	Votes	Live/Work Unit
1	1/60	1	Yes
2	1/60	1	Yes
3	1/60	1	Yes
4	1/60	1	Yes
5	1/60	1	Yes
6	1/60	1	Yes
7	1/60	1	Yes
8	1/60	1	Yes
9	1/60	1	Yes
10	1/60	1	No
11	1/60	1	No
12	1/60	1	No
13	1/60	1	No
14	1/60	1	No
15	1/60	1	No
16	1/60	1	No
17	1/60	1	No
18	1/60	1	No
19	1/60	1	No
20	1/60	1	No
21	1/60	1	No
22	1/60	1	No
23	1/60	1	No
24	1/60	1	No
25	1/60	1	No
26	1/60	1	No
27	1/60	1	No
28	1/60	1	No
29	1/60	1	No
30	1/60	1	No
31	1/60	1	No

32	1/60	1	No
33	1/60	1	No
34	1/60	1	No
35	1/60	1	No
36	1/60	1	No
37	1/60	1	No
38	1/60	1	No
39	1/60	1	No
40	1/60	1	No
41	1/60	1	No
42	1/60	1	No
43	1/60	1	No
44	1/60	1	No
45	1/60	1	No
46	1/60	1	No
47	1/60	1	No
48	1/60	1	No
49	1/60	1	No
50	1/60	1	No
51	1/60	1	No
52	1/60	1	No
53	1/60	1	No
54	1/60	1	No
55	1/60	1	No
56	1/60	1	No
57	1/60	1	No
58	1/60	1	No
59	1/60	1	No
60	1/60	1	No
61	0.00%	1	No

EXHIBIT E

PROHIBITED USES FOR THE COMMERCIAL UNIT

Medical or Scientific Lab

Rehabilitation Services

Funeral

Hotel/Motel

Distributive Business/wholesale

Warehouse

Power/gas Substation

Commercial Amusement (outside)

Flea Market

EXHIBIT F

PROHIBITED USES FOR LIVE/WORK UNITS

Medical or Scientific Lab

Rehabilitation Services

Funeral

Hotel/Motel

Distributive Business/wholesale

Warehouse

Power/gas Substation

Commercial Amusement (outside)

Beer and Cigarette Market

Flea Market

ATTORNEY'S CERTIFICATE

This document is intended to serve as the attorney's opinion which is required under the terms of Tennessee Code Annotated, Section 66-27-103(b). The undersigned, an attorney licensed to practice law in the State of Tennessee, hereby declares that the following legal documents required in Chapter 27 of the Tennessee Horizontal Project Act, Tennessee Code Annotated, Section 66-27-101 et. seq., for the creation of a planned unit development are attached as Exhibit A, and therefore a planned unit development under such chapter has been created:

1. The Declaration of Covenants, Conditions and Restrictions for PROXIMITY, a planned unit development horizontal property regime (the "Project").
2. By-Laws of PROXIMITY Homeowners Association, Inc., a Tennessee nonprofit corporation (the "Association").
3. The plat for the Project, which plat shows Private Elements.
4. The Charter of the Association (a townhouse corporation).

Witness my hand this 30th day of August, 2021.

R E Wood

Printed Name: ROBERT E. WOOD