Karen Johnson Davidson County
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This Instrument Prepared By:
ORTALE KELLEY LAW FIRM
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Nashville, TN 37201

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR 709 40TH AVENUE NORTH TOWNHOMES, A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

THIS DECLARATION is made and entered into by **E&B, GP, a Tennessee General Partnership,** (hereinafter referred to as the "Declarant"), this the 11 day of May, 2023, for itself, and its successors, successors-in-title, and assigns.

WITNESSETH:

WHEREAS, the Declarant is the record owner and holder of the legal title of a tract or parcel of real property located in Davidson County, Tennessee, and more particularly described on **Exhibit "A"** attached hereto and made a part hereof (the "Parcel"); and

WHEREAS, the Declarant intends to and does hereby submit the Parcel together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any way pertaining thereto (the "Property") to the provisions of the Tennessee Horizontal Property Act, Tenn. Code Ann. § 67-27-101 *et seq.*, for the express purpose of establishing thereon a horizontal property regime with private elements to be known as of 709 40TH AVENUE NORTH TOWNHOMES, and

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

NOW, THEREFORE, the Declarant declares as follows:

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

(a) "Act" means the Horizontal Property Act of the State of Tennessee, as codified under Tenn. Code Ann., §§ 66-27-101, *et seq.*

(b) "Association" means of 709 40TH AVENUE NORTH TOWNHOMES HOMEOWNERS ASSOCIATION, INC., a Tennessee not- for-profit corporation.

(c) "Board" means the Board of Directors of 709 40TH AVENUE NORTH TOWNHOMES HOMEOWNERS ASSOCIATION, INC., a Tennessee not-for-profit corporation.

(d) "Building" or "Buildings" means the buildings located on the Parcel and forming part of the Property and containing the Units. The "Building" or "Buildings" are and shall be delineated on

the Plat. If additional phases are annexed into the provisions hereof, Building or Buildings shall also mean the buildings located upon the additional phase or phases so annexed.

(e) "Bylaws" means the Bylaws of 709 40TH AVENUE NORTH TOWNHOMES HOMEOWNERS ASSOCIATION, INC., attached hereto as **Exhibit "C"** and made apart hereof, as amended from time to time. For purposes of the Act, all provisions contained in this Declaration dealing with the administration and maintenance of the Property shall be deemed to be a part of the Bylaws.

(f) "Charter" shall mean and refer to the Charter of 709 40TH AVENUE NORTH TOWNHOMES HOMEOWNERS ASSOCIATION, INC., as filed with the Secretary of State of the State of Tennessee. A copy of the Charter of the Association is attached hereto as **Exhibit "B"**.

(g) "Common Elements" means all real and personal property within the Property other than the Units (which include the Private Elements within the Units), which are now or hereafter owned by the Association. The Common Elements shall be owned and held by the Association for the common use and enjoyment of the Unit Owners.

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

(i) "Declarant" means **E&B, GP,** a Tennessee general partnership, its successors and assigns, provided such successors or assigns are designated in writing by Declarant as a successor or assign of the rights of Declarant set forth herein in an instrument recorded in the Register's Office for Davidson County, Tennessee.

(j) "Limited Common Elements" means any Common Elements serving a single Unit or a certain number of Units to the exclusion of other Units, as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful Occupants of such Unit or Units either in this Declaration, on the Plat, or by later decision of all of the Unit Owners.

(k) "Majority" or "majority of the Unit Owners" means the owners of more than fifty percent (50%) of the voting rights of the Unit Owners.

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

(m) "Parcel" means the parcel or tract, or parcels and tracts collectively, of real estate described on **Exhibit "A"** attached to this Declaration. If additional phases are annexed into the provisions hereof, Parcel shall also mean the additional property so annexed.

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

(o) "Plat" means the plat or survey of the Property submitted to the provisions of the Act showing the number of each Unit, expressing its location and other data necessary for identification, including but not limited to the area of the Private Elements upon which the Unit is located, as well as the location of any Common Elements and Limited Common Elements; said Plat for the Parcel described on **Exhibit "A"** is attached hereto as **Exhibit "D".** If additional phases are annexed into the provisions hereof, Plat shall also mean the plat for the additional phase or phases so annexed.

(p) "Private Elements" means the lot area upon which each Unit is located and the 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 as shown on the Plat (and the Plat shall control any conflict between this document and the Plat.) Units, as referenced on the Plat, shall be deemed to refer to the Private Elements.

(q) "Property" means all the land and space comprising the Parcel, and all improvements and structures thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act. If additional phases are annexed into the provisions hereof, Property shall also mean and include the additional area so annexed.

(r) "Unit" means a portion of the Property as shown and designated in the Plat for separate ownership and shall include the Private Elements and the residence and improvements now and hereafter located thereon. The Units are identified by an alphabetic letter or number (or combination thereof) on the Plat and may be held and conveyed by reference to such letter or number. Conveyance of a Unit shall automatically convey the undivided membership of each Unit Owner in the Association. Any Unit may be jointly or commonly owned in any estate recognized under applicable law. The term "Unit" as used in this Declaration shall have the same meaning as the term "Apartment" as used in the Act.

(s) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit, as well as its respective Private Elements, and any interest in the Common Elements appurtenant thereto, and shall be deemed the same as a "co-owner" under the Act. Unless specifically provided otherwise herein, the Declarant shall be deemed a Unit Owner so long as the Declarant is the titleholder of any Unit.

2. Submission of Property to the Act. The Declarant, by recording this Declaration, does hereby submit arid subject the Parcel and the Property to the provisions of the Act and hereby establishes a horizontal property regime with private elements as authorized and described in the Act and to be hereafter known as 709 40TH AVENUE NORTH TOWNHOMES.

3. Plat. The Plat sets forth the numbers, locations, and other data with respect to the Units, Private Elements, and Common Elements as required by the Act.

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

5. Association and Management of the Property.

(a) Association of Unit Owners and Administration and Operation of the Property. The Association shall be the governing body for all of the Unit Owners and shall be operated to provide for the maintenance, repair, replacement, administration, operation and care of the Property as provided in the Act, this Declaration and Bylaws. The Unit Owners shall each be members of the Association, with each Unit holding an undivided membership interest in the Association which shall be appurtenant to such Unit, each such membership interest appurtenant to a Unit being in an equal share, subject to the provisions concerning voting hereinafter set forth. The Bylaws for the Association shall he the Bylaws attached to this Declaration as **Exhibit "C"** and made a part hereof. The Board of Directors of the Association shall be elected and shall serve in accordance with the provisions of the Bylaws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time, as the Board deems advisable. The

Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the use and benefit of Unit Owners in accordance with the provisions of the Declaration and Bylaws. Each Unit Owner shall be a member of the Association so long as such owner is a Unit Owner. A Unit Owner's membership shall automatically terminate when such Owner ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall automatically succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be divided among the respective Unit Owners with one (1) vote granted to each Unit (except that the Declarant shall have three votes per Unit as provided in Section 5(b) below).

(b) Voting Membership.

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

Class B. The Class B member shall be the Declarant and shall be entitled to one (1) vote per Unit owned, plus an additional four (4) votes for each vote outstanding in favor of any other person or entity. The Class B membership shall cease and be converted to Class A membership upon the earlier to occur of (the "Class B Control Period"):

(i) when one hundred percent (100%) of the Units in all phases of the development which are contemplated to be platted have been sold by Declarant; or

(ii) on any such earlier date as the Declarant, in its sole discretion, elects to terminate the Class B Control Period; or

(iii) January 1, 2026.

(c) Management of Property. The Board shall have the authority to engage the services of an agent (herein sometimes referred to as the "Managing Agent") to maintain, repair, replace, administer and operate the Property, or any part thereof, to the extent deemed advisable by the Board, subject to the provisions of subsection (d) below. The Board shall require that such Managing Agent have fidelity bond coverage on its employees handling Association funds. The cost of such services shall be a Common Expense, as defined in Section 10 below.

(d) Initial Management Contract. The first Board, appointed as provided herein, shall ratify and approve the Management Agreement between the Declarant, on behalf of the Association (if applicable), and a management corporation, to act as Managing Agent for the Property, for a term as approved by said first Board.

(e) Use by Declarant. During the period of sale by the Declarant (and/or any builder(s)) of any Units, the Declarant (and/or any builder(s)), and theirs agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access, and egress from the Units, Common Elements, and Property as may be required for purposes of sale of the Units, While the Declarant (and/or any builder(s)) owns any of the Units and until each Unit sold by it is occupied by the purchasers, the Declarant (and/or any builder(s)) and its employees may use and show one or more of such

unsold or unoccupied Units as a model Unit or Units, or as a sales office, and may maintain customary signs in connection therewith.

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

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

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

7. **Ownership of Interests in the Association.** Subject to the provisions concerning voting rights hereinabove contained, each Unit shall be allocated an equal percentage ownership in the Association. The percentages of ownership interests shall remain constant unless hereafter changed by recorded amendment to this Declaration consented to in writing by the Unit Owners, in accordance with the requirements hereinafter contained. Said ownership interest shall be an undivided interest, and the undivided membership interests in the Association shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in the Association corresponding to said Unit. The undivided percentage of ownership in the Association corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit.

8. **Use of the Common Elements.** Except as hereinafter set forth, each Unit Owner shall have the right to use the Common Elements (except the Private Elements) in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend to each Unit Owner, and such Owner's agents, servants, tenants, family members, customers, invitees and licensees. However, each Unit Owner shall have the right to the exclusive use and possession of the Private Elements and Limited Common Elements attributable to the Unit. Such rights to use the Common Elements shall be subject to and governed by the provisions of the Act, Declaration, Bylaws and any rules and regulations established by the Association ("Rules and Regulations"). In addition, the Association shall have the authority to lease, grant concessions or grant easements with respect to parts of the Common Elements, subject to the provisions of the Declaration and Bylaws. All income derived by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

9. **Storage Areas, Parking, and Detached Parking Areas, and Driveways.** No storage units or areas shall be permitted upon the Property outside of a Unit. Each Unit Owner's parking area, along with the related driveway or parking pad, as generally depicted on Exhibit B, shall be maintained, repaired, and insured by the Unit Owner. In addition, each Unit Owner may park up to two (2) cars in the driveway or parking pad servicing such Unit Owner's parking area; provided, however, that such parking of vehicles shall not interfere with another Unit Owner's parking or access to such Unit Owner's parking area. Use of

the parking spaces and parking area shall also be in accordance with any Rules and Regulations of the Association. The parking assigned to the Units shall only be used by the Unit Owners or Occupants and their family members, guests or invitees.

10. Common Expenses.

(a) Common Expenses. Each Unit Owner shall pay an equal share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance with the Declaration and Bylaws (which expenses are herein sometimes referred to as "Common Expenses"), including, but not limited to, the maintenance and repair thereof of any Common Elements and any and all replacements and additions thereto. Payment of Common Expenses shall be in such amounts and at such times as determined in the manner provided in the Bylaws. No Unit Owner shall be exempt from payment of such Unit Owner's proportionate share of the Common Expenses by waiver or non-use of enjoyment of the Common Elements, or by abandonment of such Owner's Unit. If any Unit Owner shall fail or refuse to make any such payment of the Common Expenses when due, the amount thereof, together with interest thereon at the rate often percent (10%) per annum, after said Common Expenses become due and payable, and also together with a reasonable late fee (per payment or per month) as the Association may determine, said late fee being assessed upon any payment received more than ten (10) days after its due date, shall constitute a lien on the interest of such Unit Owner in the Unit as provided in the Act. Each assessment for Common Expenses against a Unit shall also be the personal obligation of the Unit Owner at the time the assessment is due. A successor in title to a Unit shall not be personally obligated to pay any unpaid assessments for Common Expenses which have been levied against a Unit unless such successor in title expressly assumes the payment of the same, provided, however, any lien encumbering a Unit as above described shall not be affected by transfer of a Unit, except as otherwise provided under the Act.

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

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

(c) Mortgage and Deed of Trust Protection. The lien for Common Expenses payable by a Unit Owner shall be subordinate to the lien of a recorded mortgage or deed of trust on the interest of such Unit Owner, except for the amount of the proportionate share of Common Expenses which become due and payable from and after the date on which the mortgagee or beneficiary thereunder either takes possession of the Unit encumbered thereby, accepts a conveyance of any interest therein (other than as security) or forecloses its mortgage or deed of trust. This subsection (c) shall not be amended, changed, modified or rescinded without the prior written consent of all mortgagees and deed of trust beneficiaries of record.

(d) Special Assessments. In addition to the 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 and personal property related thereto, provided that any such assessment shall have the assent of all Unite Owners.

(e) Exemptions. Notwithstanding any provision to the contrary in this Declaration, Bylaws, or any Rules and Regulations, and except for the contribution required in this subsection, the Declarant and any Successor Declarant shall be exempt from the payment of assessments for any Units owned by the Declarant, and any Successor Declarant until such time as the weighted voting rights provided by Section 5(b) of the Declaration no longer provide an automatic majority to the Declarant or any Successor Declarant. During the time that the Declarant and any Successor Declarant is exempt from the payment of assessments, the Declarant, and any Successor Declarant shall fund and pay any shortfall between the annual budget for the Association and the actual costs of operating and maintaining the Common Elements and administering the Association. The Declarant's, and any Successor Declarant's, obligation to fund any such shortfall shall terminate at such time as the Declarant's, and any Successor Declarant's, weighted voting rights no longer provide an automatic majority to the Declarant or any Successor Declarant. Notwithstanding the foregoing, if any provision of the Act states that Declarant or any Successor Declarant may not be exempt from the payment of assessments as set forth herein, then any shortfall payments funded by the Declarant or Successor Declarant shall offset any such unpaid accrued assessments.

11. Mortgages and Deeds of Trust. Each Unit Owner shall have the right, subject to the provisions herein, to make separate mortgages and deeds of trust for such Unit Owners' respective Unit, including such Unit Owner's respective ownership interest in the Association. No Unit Owner shall have the right or authority to make or create, or cause to be made or created, from the date hereof, any mortgage, deed of trust or other lien on or affecting the Property or any part thereof, except only to the extent of such Owner's Unit and the interest in the Association corresponding thereto.

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

13. Insurance. The Board shall obtain insurance for the Common Elements, exclusive of the Units, Private Elements, against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements, and against such other hazards and for such amounts as the Board may deem advisable. Such insurance shall, if possible, include all or any portion of all Limited Common Elements allocated or assigned to the Unit Owners. Insurable replacement cost shall be deemed the cost of restoring the Common Elements, or any part thereof, to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Board of the Association, as the trustee for each of the Unit Owners in direct proportion to said Unit Owner's respective percentage of ownership in the Association, as set forth in the Declaration, and for the holders of mortgages and deeds of trust on his Unit, if any. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against individual Unit Owners. The premiums for such insurance shall be a Common Expense; however, premiums for such

insurance may be separately billed to each Unit Owner for such Owner's Unit and such Owner's corresponding percentage of ownership in the Association.

Except as otherwise required under the Act, in the event of damage to or destruction of any of the Property or Common Elements as a result of fire or other casualty covered by insurance proceeds (unless more than three-fourths (3/4) of the Common Elements require reconstruction) the Board shall, in its sole and absolute discretion, determine and without intervention of any Unit Owner arrange for the prompt repair and restoration of the damaged portions of the Common Elements substantially in accordance with the original plans. Where the insurance indemnity is insufficient to cover the cost of such repairs and restoration, the deficit shall be paid by all Unit Owners directly affected by the damage, in proportion to each Unit's percentage of ownership in the Association. The Board shall not be responsible for the repair, replacement or restoration of Unit or Private Elements for which the responsibility or maintenance and repair is that of a Unit Owner, or for furniture, furnishings, fixtures, appliances, equipment, personal property stored elsewhere on the Property (if any) or other improvements installed in the Unit by a Unit Owner or Occupant.

The Board shall also have authority to and shall obtain comprehensive public liability insurance, in such amounts as it deems desirable, and worker's compensation insurance and other liability insurance as it deems desirable, insuring each Unit Owner, mortgagees of record, if any, the Association, its officers, directors, Board and employees, the Declarant, and the Managing Agent, if any, from liability in connection with the Common Elements, including any Limited Common Elements allocated or assigned to the Unit Owners. The premiums for such insurance shall be a Common Expense; however, premiums for such insurance shall be separately billed to each Unit Owner for such Owner's corresponding percentage of ownership in the Association.

The Board shall also have authority to and may obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Property and each member of the Board and officers of the Association, and members of any committee appointed pursuant to the Bylaws of the Association from liability arising from the fact that said person is or was director or officer of the Association, or a member of such a committee. The Board may also obtain Fidelity Coverage covering officers, directors and employees who handle or are responsible for handling Association funds. Such bonds shall be in such amounts as the Board may determine, but in no event less than one hundred fifty percent (150%) of the monthly operating expenses of the Association, and shall contain waivers of any defense based upon the exclusion of persons serving without compensation.

Each Unit Owner shall be responsible for obtaining insurance, which shall include hazard and liability coverage, on such Owner's Unit and Private Elements, as well as additions and improvements thereto, including, without limitation, furniture, furnishings, fixtures, appliances, equipment, personal property stored elsewhere on the Property (if any), or other improvements installed in the Unit by a Unit Owner or Occupant. In addition, a Unit Owner must insure against such Owner's personal liability and loss or damage by fire or other hazards with respect to any Limited Common Elements allocated or assigned to such Unit Owner to the extent not covered by the insurance policy obtained by the Board for all of the Unit Owners as part of the Common Expenses, as above provided. Each new Unit Owner shall deliver to the Association upon conveyance of title to a Unit and every year thereafter that such Owner shall maintain ownership of such Unit by no later than ten (10) days prior to the expiration of such insurance policy, a certificate of insurance (i) evidencing that the aforementioned insurance coverage has been obtained and (ii) naming the Declarant, during the Class "B" Control Period, and the Association as Additional Insureds. Upon the Unit Owner's default in providing such evidence of insurance, the Association shall have the right, but no duty, upon advance written notice to said Unit Owner, to obtain such liability and hazard insurance coverage and charge the costs thereof to said Unit Owner, which costs shall constitute a lien on the interest of such Unit Owner in the Unit as provided in the Act.

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

(a) **Obligations of Unit Owners.** Each Unit Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within and to the exterior of his Unit and its Private Elements and Limited Common Elements allocated or assigned to such Unit, except for the maintenance and repair of the parking areas and related driveways as discussed in Section 9 above. These maintenance and repair obligations shall include, without limitation, maintenance of the lawn and landscaping serving such Unit, as well as the obligation to ensure that all windows and screens of such Unit Owner's respective Unit are cleaned and washed, and any damage thereto repaired, at the expense of such Unit Owner. Upon the Unit Owner's default in performing such required maintenance, the Association shall have the right, but no duty, upon thirty (30) days' advance written notice to said Unit Owner, to perform the necessary maintenance and to charge the costs thereof to said Unit Owner, which costs shall constitute a lien on the interest of such Unit Owner in the Unit as provided in the Act. As discussed in Section 9 above, the parking areas and related driveways shall be maintained, repaired, and insured by the Unit Owners.

(b) **Obligations of Association.** The maintenance of, repairs to, and replacements within, the Common Elements and any Limited Common Elements that are not maintained by the Unit Owners shall be the responsibility of and shall be furnished by the Association, and the cost thereof, shall be part of the Common Expenses subject to the provisions of Section 10(a) herein and further subject to the Bylaws and Rules and Regulations of the Association.

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

(e) **Association Access.** The authorized representative of the Association, Board or of the Managing Agent with approval of the Board shall be entitled to reasonable access to the individual Units and Private Elements as may be required in connection with the preservation of any individual Unit or Private Elements in the event of an emergency, or in connection with maintenance of, repairs or replacements within the Common Elements, Limited Common Elements, Private Elements or any equipment, facilities or fixtures affecting or serving the other Units, Common Elements, Limited Common Elements, or Private Elements or to make any alteration required by any governmental authority.

(f) **Party Walls.** Each wall built as a part of the original construction of a structure upon the Private Elements and placed on the dividing line between two Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. To the extent not otherwise covered by insurance policies held by the Association or the affected Unit Owners, the cost of reasonable repair and maintenance of a party wall shall be shared by the Unit Owners who make use of the wall. The repair and restoration of any party walls shall be substantially in accordance with the original plans.

15. **Architectural Control; Alterations, Additions or Improvements.**

(a) Architectural Control. Except for initial construction of Units and improvements upon the Private Elements or other portions of the Property (i) by or on behalf of Declarant or (ii) any builder who purchases a Unit(s) from the Declarant, no reconstruction, alteration, or improvements may be erected, placed or altered with respect to any Units, Private Elements (except as otherwise provided under subsection (b) hereunder) or other portions of the Property unless local zoning codes/ordinances permits such improvements such that a building permit can be obtained, and no such construction or alteration of improvements may be commenced until the construction plans and building specifications showing (i) the location of improvements on the Private Elements or such other portions of the Property; (ii) the grade elevation (including rear, front and side elevations); (iii) the type of exterior material and roof material (including delivery of samples thereof); (iv) the color of paint or stain to be applied to any exterior surfaces and the color of the roof material (including delivery of samples thereof), shall have been approved in writing by the Architectural Control Committee which shall be (a) appointed by the Declarant until such time as the Declarant has sold all of its Units (b) and thereafter, the Board members. Any reconstruction of Units shall be substantially in accordance with the original plans by the Declarant. Upon giving approval, construction shall be started and prosecuted to completion promptly and in strict conformity with such plans.

In the event any Unit Owner makes any alteration covered under the previous paragraph without obtaining the required approval, then the Association or any adversely affected Unit Owner shall have available all remedies at law or in equity to against such defaulting Unit Owner for damages or injunctive relief, and if successful in any such proceedings, said party shall also be entitled to recover reasonable attorneys' fees and costs incurred in such suit and enforcement of its rights.

Declarant, the Association, the Architectural Control Committee and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. In the event that the Architectural Control Committee fails to indicate its approval or disapproval within thirty (30) days after the receipt of the required documents, approval will not be required and the related covenants set out herein shall be deemed to have been fully satisfied. Approval or disapproval by the Architectural Control Committee shall not be deemed to constitute any warranty or representation by it including, without limitation, any warranty or representation as to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations. Anything contained in this paragraph, or elsewhere in this Declaration to the contrary notwithstanding, Declarant and the Association are hereby authorized and empowered, at their sole and absolute discretion, to make and permit reasonable modifications or deviations from any of the requirements of this Declaration relating to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Unit and of the size and location of such building or improvement when, in their sole and final judgment, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Property and the improvements as a whole; provided, however, such modifications and deviations must remain within all applicable ordinances and regulations established by the Metropolitan Government of Nashville and Davidson County, Tennessee.

(b) Alterations, Additions or Improvements on Common Area or within Units. No alteration of any Common Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Board. The Board may authorize alterations, additions, and improvements of the Common Elements as provided in the Bylaws. Any Unit Owner may make alterations, additions or improvements within his Unit without the prior written approval of the Board, but such Unit Owner shall be responsible for any damage to other Units, the Common Elements, the Property, or any part thereof, resulting from such alterations, additions and improvements. Any alteration and/or maintenance made by a Unit Owner to the exterior of his Unit shall be in strict conformity to the

architectural design and scheme of the Unit as of the date of this instrument unless approved by the unanimous agreement of the Unit Owners.

16. Decorating. Each Unit Owner, at such Owner's expense, shall furnish and be responsible for all decorating within such Owner's Unit as well as any Private Elements and Limited Common Elements serving such Unit. The Board may adopt reasonable Rules and Regulations regulating the decoration of the exterior of Units, Private Elements, and Limited Common Elements.

17. Encroachments and Easements. If any portions of the Common Elements shall actually encroach upon any Unit or its Private Elements, or if any Unit or its Private Elements or Limited Common Elements shall actually encroach upon any portions of the Common Elements, there shall be deemed to be mutual easements in favor of the Association and the respective Unit Owners involved, to the extent of such encroachments, so long as the same shall exist.

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

18. Use and Occupancy Restrictions.

(a) **Residential Use Only**. Except as otherwise provided herein or under the Bylaws or Rules and Regulations, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed and as allowed by municipal zoning laws. Each Unit shall be used as a single family residence or such other use permitted by this Declaration, and for no other purposes except that professional and quasi-professional people may use their residence (not in violation of municipal zoning laws) as an ancillary or secondary facility to an office established elsewhere. Nothing in this Section shall prohibit Unit Owners from leasing their Units to others to be used as a residence. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from: (a) maintaining a personal professional library; (b) keeping personal business or professional records or accounts; or (c) handling personal business or professional telephone calls or correspondence. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions or municipal zoning law.

No Unit or Common Elements may be used in violation of the restrictions and provisions contained in the Bylaws or any Rules and Regulations. The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, customers, invitees and licensees for access, ingress to and egress from the respective Units and for such other purposes incidental to use of the Units; provided, however, that any areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession or casement, presently in existence or entered into by the Board at some future time, affecting any part or all of said Common Elements.

(b) **Structural Compliance**. All structures shall be built in substantial compliance with the plans and specifications therefore, approved by Declarant or the Architectural Control Committee as provided in Section 15 herein.

(c) **Improvement and Setback Restrictions**. No building or structure, or any part thereof, shall be located on any Unit, its Private Elements, or related Limited Common Elements, so that the improvements exceed the boundaries of the Unit and its Private Elements. No encroachment upon any utility easement reserved on the Plat shall be authorized or permitted.

(d) **Re-subdivision of Units**. No Unit shall be re-subdivided, nor shall any building be erected or placed on any such re-subdivided Unit, unless such re-subdivision is approved by the Association, as well as any governmental authority having jurisdiction. Declarant, however, shall have the right, but not the obligation, to re-subdivide into Units, by recorded plat or in any other lawful manner, all or any part of the Property contained within the outer boundaries of the Plat, and such Units, as re-platted, shall be subject to this Declaration as if such Units were originally included herein. Any such re-plat must comply with pertinent re-platting ordinances, statutes, regulations and requirements.

(e) **Clotheslines**. Outside clotheslines shall not be permitted.

(f) **Signs and Advertisements**. No sign, advertisement, billboard or advertising structure of any kind shall be erected upon or displayed or otherwise exposed to view on any Unit, or any improvement thereon, or other portions of the Property without the prior written consent of the Board; provided that this requirement shall not preclude the installation by Declarant and/or any builder of signs identifying the entire residential development and provided further that this requirement shall not preclude the placement by Owners of "For Sale" signs in the front of individual residences of such size, character, and number as shall from time to time be approved by the Architectural Control Committee, The Architectural Control Committee shall have the right to remove any such unapproved sign, advertisement, billboard or structure that is placed on said Units or other portions of the Property, and in doing so shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

(g) **Use of Temporary Structures**. No structure of a temporary character, mobile home, camper, trailer, basement, tent, shack, garage, bam or other outbuilding shall be erected or moved on to any Unit or other portions of the Property at any time. No structure of any kind except a dwelling house may be occupied as a residence, and the outside of any building so occupied must be completed before occupancy, including landscaping. Temporary structures may be used as building or sales offices and for related purposes during the construction period by the Declarant, any builder, or their assigns.

(h) **Storage of Personal Property and Automobiles, Boats, Trailers and Other Vehicles**. Articles of personal property belonging to any Unit Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall be stored within the Unit and not stored upon other portions of the Property.

No inoperative vehicles may be stored in any location upon the Property. No recreational vehicles (including, but not limited to. campers, trailers, boats, boat trailers and travel trailers), tractor-trailers, buses, or other large commercial vehicles may be parked anywhere upon the Property. The foregoing shall not apply to construction vehicles of the Declarant or any builder. Overnight parking of any vehicle, trailer or other wheeled instrument or equipment on any street or driveway upon the Property shall not be permitted.

(i) **Intentionally Omitted.**

(j) **Maintenance**. All Units, as well as the related Private Elements and Limited Common Elements, shall be maintained in a neat and attractive condition by their respective Owners or Occupants. Such maintenance shall include, but not be limited to, painting, repairing, replacing, and caring for roofs, gutters, downspouts, building surfaces, patios, decks, walkways, driveways, and other exterior improvements. The Owner or Occupant of each Unit shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner and all trees and shrubbery pruned and cut. No Unit shall be used for storage of material and equipment, except for normal residential requirements or incident to construction of improvements thereon as herein permitted. The accumulation of garbage, trash or rubbish of any kind and the burning (except as permitted by law) of any such materials is prohibited.

(k) **Animals and Pets**. No animals, livestock, or poultry of any kind shall be raised, bred, pastured, or maintained in any Unit or other portions of the Property, except household pets such as small dogs and cats which may be kept thereon in reasonable numbers as pets for the sole pleasure of the Owner or Occupant, but not for any commercial use or purpose. All pets shall be confined to the Unit Owner's Unit or kept on a leash or within the fenced area of a Unit's Limited Common Elements when allowed out of doors. The Unit Owner shall be required to pick up and properly dispose of any feces deposited by any and all pets upon the Property. Any disposal method that contemplates leaving said waste material outside of any Unit shall not be permitted, except temporary storage in a suitable trash container while waiting for regular garbage pickup. A Unit Owner shall be responsible for all damage to the Common Elements caused by said Unit Owner's pets.

(l) **Nuisances and Unsightly Materials**. Each Owner or Occupant shall refrain from any act or use of his Unit that could reasonably cause embarrassment, discomfort, annoyance, or nuisance to others. No noxious, offensive, or illegal activity shall be carried on in any Unit or upon other portions of the Property. No Unit shall be used, in whole or in part, for the storage of rubbish of any character whatsoever; nor shall any substance, thing, or material be kept upon any Unit which will emit foul or noxious odors or which will cause any noise that will or might disturb the peace and quiet of other Owners or Occupants The foregoing shall not be construed to prohibit the temporary deposits of trash and other debris for pick-up by garbage and trash removal service units.

(m) **Governmental Restrictions**. Each Owner shall observe all governmental building codes, health regulations, zoning restrictions, and other regulations applicable to his Unit, Private Elements, and allocated or assigned Limited Common Elements. In the event of any conflict between any provision of any such governmental code, regulation, or restriction and any provisions of this Declaration, the more restrictive provision shall apply.

(n) **Rules and Regulations**. Unit Owners shall be subject to such further restrictions as may be contained rules and regulations of the Association 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.

19. Remedies. In the event of any violation of the provisions of the Act, this Declaration, Bylaws, or any Rules and Regulations of the Association by any Unit Owner (either by his own conduct or by the conduct of any Occupant of his Unit), the Association, or its successors or assigns, or Unit Owner shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, Bylaws, or said Rules and Regulations, or which may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereinafter in this Section

19, or for any combination of remedies, or for any other relief. All expenses in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of fifteen (15%) percent per annum or such other uniform lawful rate as the Board shall determine, until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the common expenses, and the Board or other adversely affected Unit Owner shall have a lien for all of the same, as well as for nonpayment of common expenses, upon the Unit, and its appurtenant interest in the Common Elements of such defaulting Unit Other and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property; provided, however, that such lien shall be subordinate to the lien of a recorded first mortgage or deed of trust on the Unit, to the extent herein set forth in Section 10(b) hereof. In the event of any such default by a Unit Owner, the Board and/or Paying Unit

Owner shall have the authority to correct such default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board. This section shall not be amended, changed, modified or rescinded without the prior consent of all holders of record of mortgage and deed of trust liens against the Units.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board the right, in addition to any other rights provided for in this Declaration: (a) to enter (either peaceably or forcibly without liability to such Unit Owner for such entry) upon the Unit, or any portion of the Property upon which or as to which such violation or breach exists, and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach: or (c) to take possession (either peaceably or forcibly without liability to such Unit Owner for such entry) of such Unit Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law.

If any Unit Owner (either by his own conduct or by the conduct of any other Occupant of his Unit) shall violate the Act, or any of the covenants or restrictions or provisions of this Declaration, the Bylaws, or the regulations adopted by the Board, and if such default or violation shall continue for ten (10) days after notice to the Unit Owner in writing from the Board or Paying Unit Owner, or shall occur repeatedly during any ten (10) day period after such written notice or request to cure such violation from the Board, then the Board shall have the power to issue to said defaulting Owner a notice in writing terminating the rights of said defaulting Owner to continue as a Unit Owner and to continue to occupy, use, or control his Unit, and thereupon an action in equity may be filed by the Board against said defaulting Owner for a decree of mandatory injunction against such defaulting Owner or Occupant, or in the alternative, for a decree declaring the termination of said defaulting Owner's right to occupy, use, or control the Unit owned by him on account of said violation, and ordering that all the right, title and interest of said defaulting Owner in the Property shall be sold (subject to the lien of any existing deed of trust or mortgage) at a judicial sale upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the said defaulting Owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall be first paid to discharge court costs, court reporter charges, reasonable attorney's fees, and all other expenses of the proceeding and sale, and all such items shall be taxes against said defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder, or any liens, shall be paid to said defaulting Unit Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Unit and the Unit Owner's corresponding

percentage of ownership in the Common Elements, and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Unit Ownership sold subject to this Declaration.

20. Amendments.

(a) Amendments Annexing Additional Phases. The Declarant may, but shall not be obligated to, incorporate additional area into additional phases of the horizontal property regime governed by this Declaration. The annexation of such additional phases shall be accomplished by the unilateral execution by Declarant, and recording, of an amendment to this instrument setting forth the additional real property to be brought within the provisions of this Declaration and reciting that it shall be held and conveyed subject to the provisions hereof as an additional phase or phases of the Property. Upon the addition of additional Units to the Property, then the percentage ownership in the Association of the Unit Owners shall be automatically adjusted so that each Unit Owner owns an equal undivided ownership interest in the Association.

(b) Other Amendments. Except as specifically stated elsewhere herein, and except for this Section 20, any provisions of this Declaration may be amended, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission, signed by Unit Owners owning not less than three-fourths (3/4ths) of the total votes of the Association, including the votes or Units of the Declarant, provided, however, that all lien holders of record have been notified by certified mail of such change, modification or rescission, and an affidavit by the secretary of the Association certifying to such mailing is made a part of such instrument.

However, if the Act the Declaration or the Bylaws require the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all Unit Owners or all lien holders or both as required by the Act or this Declaration. The amendment, modification or rescission, whether accomplished under the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the office of the Register of Deeds of Davidson County, Tennessee; provided, however, that no provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act.

Notwithstanding the above, during the Class B Control Period, the Declarant shall have the right to make and record any necessary amendment to this instrument for the express purpose of completion of development or correction of clerical errors or as maybe required to obtain FHA, VA, FNMA, or FHLMC (all as defined under Section 27 herein) approval, as applicable, for the horizontal property regime.

Any amendments adopted pursuant to this Section shall be evidenced by an instrument in writing signed by a party or parties holding the requisite number of votes required to adopt the amendment, which instrument shall be recorded in the Register's Office for Davidson County, Tennessee. Any such instrument, which has been properly enacted or adopted, shall be binding upon all Unit Owners without regard for whether all of the Unit Owners signed the subject instrument.

21. Notices. Notices provided for in the Act, Declaration or Bylaws shall be in writing, and shall be addressed if to a Unit Owner, to the address of such Owner's Unit, and if to the Association or Board, as the case may, be to the registered office, as set forth in the Charter of the Association or to such other address as may be designated by the Association or Board from time to time, or at such other address as may be hereinafter provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices by giving written notice to the Association.

Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

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

22. Severability. If any provision of the Declaration, Bylaws, or any Rules and Regulations, or any section, sentence, clause, phrase, word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Declaration, Bylaws, or any Rules and Regulations 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 the Declaration, Bylaws, or any Rules and Regulations shall be construed as if such invalid part was never included therein.

23. 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 Queen of England, Elizabeth 11.

24. Rights and Obligations. Each grantee of the 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 Bylaws which are more than administrative in nature such as, but not limited to, reservations and future rights of the Declarant, are hereby incorporated into and made a part of this Declaration by reference. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time an interest or estate in said land, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

All present and future Unit Owners, tenants and Occupants of a Unit shall be subject to, and shall comply with, the provisions of the Bylaws appended hereto and recorded herewith as they may be amended from time to time. The acceptance of a deed of conveyance, devise or of a lease to a Unit, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the said Bylaws and any Rules and Regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Unit Owner, tenant or Occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

The terms and conditions of the Declaration, Bylaws and any Rules and Regulations may be incorporated by reference in, and become part of, the agreement between any mortgagee and any present or future Unit Owner who enters into such an agreement with a mortgagee. When so incorporated, any default in the terms and conditions of the Declaration, Bylaws and any Rules and Regulations may be considered as a default by the mortgagee, whereupon said mortgagee, after exercising its option to declare a default, shall then have all of the rights and privileges arising as a result of a default under its agreement with said Unit Owner.

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

in the trust beneficiary or beneficiaries, then the beneficiaries thereunder shall be considered Unit Owners for all purposes and they shall be responsible for payment of all obligations, liens, or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit. No claim shall be made against any such title holder trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of any such lien or obligation shall continue to be a charge or lien upon the Unit and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfer of title to such Unit.

26. Condemnation. In the event of a taking in condemnation or by eminent domain of a part of the Common Elements, the award made for such taking shall be payable to the Board for and on behalf of the Association and all mortgagees affected. If a majority of the Board in their discretion, with written consent of a majority of the mortgagees affected, approve the repair and restoration of such Common Elements, and the Board shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that the Board and the mortgagees do not approve the repair and commence restoration of such Common Elements within one hundred twenty (120) days after taking by the public or private authority, the Board shall disburse the net proceeds of such award on the basis of such Unit's percentage of ownership in the Association to the Unit Owners and the mortgagees as their interests may appear.

27. Provisions Relative to Mortgagee's Rights and to Federal Housing Administration, Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Regulations. Notwithstanding anything to the contrary contained in the Declaration, the Bylaws and any Rules and Regulations, all terms, conditions and regulations which are now existing, or which may be amended from time to time, by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or the Federal National Mortgage Association ("FNMA") pertaining to horizontal property regimes are hereby incorporated as terms and conditions of the Declaration and Bylaws and such shall be governing upon the Property, the 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 the Act, as such may be amended.

Specifically, without limitation upon the foregoing, the following provisions shall be fully effective and controlling over any terms of the Declaration, the Bylaws and any Rules and Regulations, that are in conflict. Any portions of such Declaration, the Bylaws and any Rules and Regulations which are in conflict with this section, or any portion of the FHA, VA, FHLMC and FNMA regulations pertaining to horizontal property regimes, are hereby deleted and the following rights of mortgagees are itemized as follows:

(a) A first mortgagee of a Unit at his request is entitled to written notification from the Association of any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under this Declaration, Bylaws, or any of the PUD documents, which is not cured within thirty (30) days.

(b) Any first mortgagee of a Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage, or deed of trust, or by foreclosure of the mortgage or deed of trust, or by deed in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata re-allocation of such assessments or charges to all Units including the mortgaged Unit).

(c) Unless all of the first mortgagees (based upon one (1) vote for each mortgage owned) of

Units have given their prior written approval, the Association shall not be entitled to:

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

ii. Use hazard insurance proceeds for losses to the Common Elements for other than the repair, replacement or reconstruction of such improvements, except as provided by Tenn. Code Ann. Section 66-27-118. In case of substantial loss to the Common Elements.

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

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

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

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

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

(i) The association shall give to FNMA, FHLMC, VA, or FHA, or any lending institution servicing such mortgages as are acquired or insured by FNMA, FHLMC, VA, or FHA, notice in writing of any loss to or the taking of Common Elements if such loss or taking exceeds Ten Thousand and No/100 ($l0,000.00) Dollars. The Association may rely upon the information contained in the book entitled "Mortgage of Units" as must be established pursuant to the By Laws, for a list of mortgagees to be notified hereby.

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

(k) Notwithstanding the above, any first mortgagee shall have all of the rights granted to a first mortgagee herein, and in addition shall have all of the rights granted to an institutional first mortgagee under its deed of trust, and under the laws of the Slate of Tennessee.

28. **Captions**. The captions are inserted only as a matter of convenience, and in no way define, limit or describe the scope of these provisions or the intent or any provision hereof.

29. **Gender**. The use of the masculine gender in the Declaration, the Bylaws and any Rules and Regulations 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 required.

30. **Attorney's Certificate**. The attorney's opinion as required under the terms of Tenn. Code Ann. § 66-27-103 is attached hereto as **Exhibit "E"** and made a part hereof.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned has executed this DECLARATION as of the day and year first above written.

DECLARANT:

E&B, GP
a Tennessee general partnership

By: Brian Neihoff
Brian Neihoff, General Partner

STATE OF TENNESSEE

COUNTY OF DAVIDSON

Before me, the undersigned, a Notary Public, within and for the State and County aforesaid, personally appeared Brian Neihoff, 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 General Partner of **E&B, GP**, a Tennessee general partnership, the within named bargainer, and that he as such General Partner, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing for and on behalf of the general partnership by himself as such General Partner.

Witness my hand and seal this 11th day of May, 2023.

J Walker Lewis
Notary Public

My commission expires: 11-5-2025

J WALKER LEWIS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES NOVEMBER 5, 2025

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Being Lot No. 10 in the Subdivision of part of Lot No. 14 of Clifton Plan of Lots adjacent to the City of Nashville, not of record.

Said Lot No. 10 fronts 50 feet on the Westerly margin of 40th Avenue North and extends between parallel lines a distance of 230 feet to an alley in the rear.

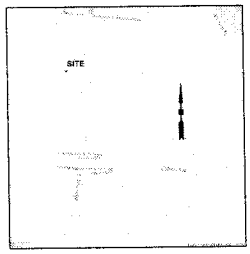
Being the same property conveyed to E&B, G.P., by Quitclaim Deed from Elizabeth M. Trinkler, dated August 8, 2022, filed for record on August 8, 2022, in Instrument No. 20220808-0090161, Register's Office for Davidson County, Tennessee.

EXHIBIT "B"

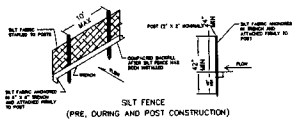
HPR SITE PLAN

FOR

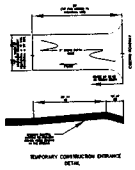
709 40TH AVENUE NORTH TOWNHOMES
[SEE ATTACHED]



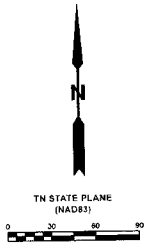
VICINITY MAP

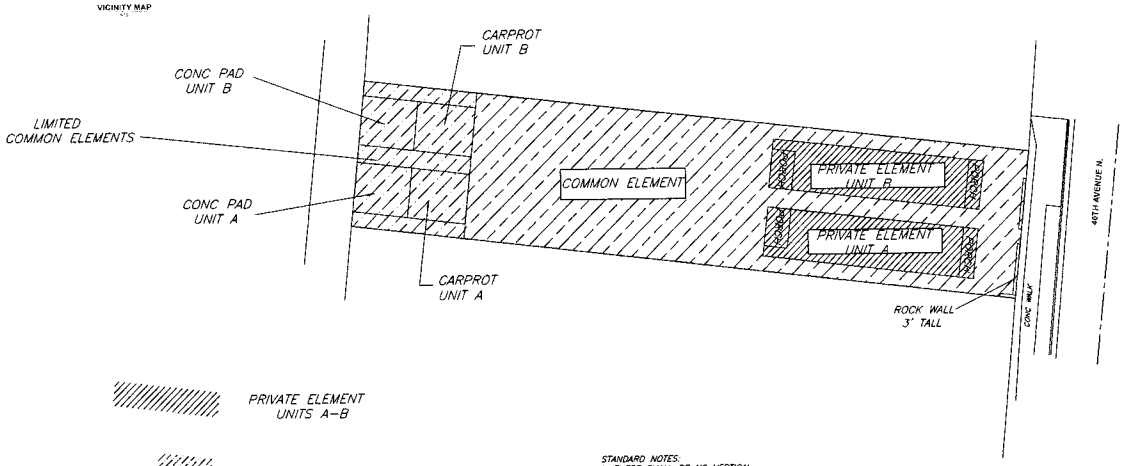


SILT FENCE
(PRE, DURING AND POST CONSTRUCTION)



TEMPORARY CONSTRUCTION ENTRANCE DETAIL





NOTES:
1) PROPERTY ZONED RMOD-A-NS RESIDENTIAL INTENDED FOR SINGLE-FAMILY, DUPLEX OF 20 DWELLING UNITS PER ACRE, ALTERNATIVE DISTRICTS PROMOTE ALTERNATIVE MODES OF TRANSPORTATION, NO STR. PERMITS
2) BUILDING SETBACKS
FRONT = 9'
SIDES = 5'
REAR = 20'

PROPERTY INFORMATION

TOTAL AREA: 0.26 ACRES
(11,473.2 SQUARE FEET)
MORE OR LESS

DEED REF: R38 137

LOCATION: 709 40TH AVE. NORTH
NASHVILLE, TN 37209
21ST COUNCIL DISTRICT
DAVIDSON COUNTY, TENNESSEE

RECORD: LOT NUMBER 14 CHATTON
INSTRUMENT # 20150512-0060421
R.O.D.C., TN

PRE-IMPERVIOUS AREA 3,763.1 SF
POST-IMPERVIOUS AREA 3,105.4 SF
NET IMPERVIOUS AREA -657.7 SF

PRIVATE ELEMENT
UNITS A–B



LIMITED
COMMON ELEMENTS



COMMON ELEMENT

STANDARD NOTES:
1. THERE SHALL BE NO VERTICAL OBSTRUCTIONS WITHIN THE SIDEWALK.
2. THE CONTRACTOR SHALL CONTACT THE DEPARTMENT OF PUBLIC WORKS – PERMITS OFFICE 615-862-8782 FOR FORMS, INSPECTIONS PRIOR TO POURING SIDEWALKS OR RAMPS.
3. SIDEWALK CROSS SLOPE SHALL NOT EXCEED 2%.
4. ALL CONSTRUCTION WITHIN RIGHT OF WAY SHALL COMPLY WITH THE AMERICANS WITH DISABILITIES ACT (ADA) IN EFFECT AT THE TIME ACTIVITIES ARE PERFORMED.

811
Know what's below.
Call before you dig.

REVISED: 5-4-21 TWP, BLOCK/LOT
REVISED 4-19-21 ADDED SHEET 2
REVISED 4-13-21 ADDED LEGEND

PAGE 1 OF 2

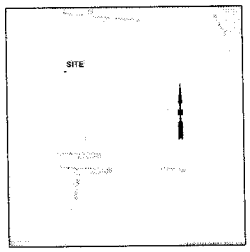
SITE PLAN OF

709 40TH AVENUE NORTH TOWNHOMES A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

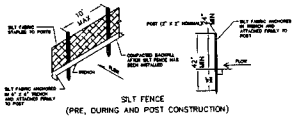
21ST COUNCIL DISTRICT
PARCEL ID 091120.30100
NASHVILLE, DAVIDSON COUNTY, TENNESSEE

CROW LAND SURVEYING
210 OLD HICKORY BLVD. UNIT #17
NASHVILLE, TN 37221
C - (615) 568-9021 PH - (615) 449-7750
crowlandsurvey@gmail.com

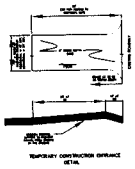
3-17-21



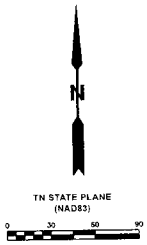
VICINITY MAP



SILT FENCE
(PRE, DURING AND POST CONSTRUCTION)



TEMPORARY CONSTRUCTION ENTRANCE DETAIL



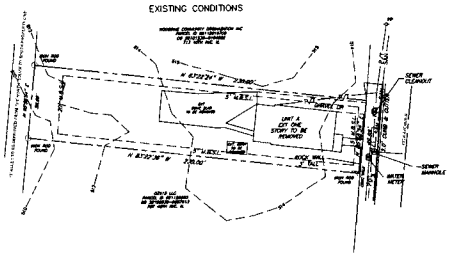
FRENCH DRAINS TO HAVE POP UP'S AT END

ALL DOWNSPOUTS/ROOF DRAINS WILL ROUTE TO RESPECTIVE MODIFIED FRENCH DRAINS, NO DISCONNECTED DOWNSPOUTS.

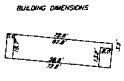
MINIMUM GRADING ON SIDES OF BUILDING TO ALLOW FOR DRAINAGE

NOTES:
1) PROPERTY ZONED RM20-A-NS RESIDENTIAL, INTENDED FOR SINGLE-FAMILY, DUPLEX OF 20 DWELLING UNITS PER ACRE, ALTERNATIVE DISTRICTS PROMOTE ALTERNATIVE MODES OF TRANSPORTATION, NO STR. PERMITS
2) BUILDING SETBACKS
FRONT = 5'
SIDES = 5'
REAR = 20'

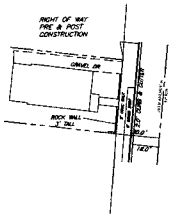
EXISTING CONDITIONS



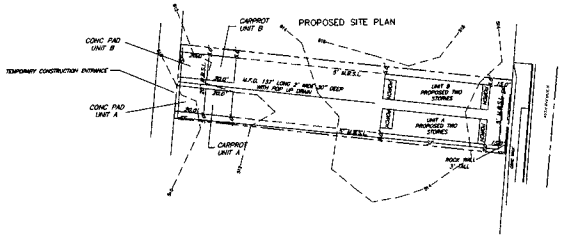
BUILDING DIMENSIONS



PRE-IMPERVIOUS AREA 3,763.1 SF
POST-IMPERVIOUS AREA 3,105.4 SF
NET IMPERVIOUS AREA -657.7 SF



PROPOSED SITE PLAN



PROPERTY INFORMATION:

TOTAL AREA: 0.24 ACRES
(11,477.36 SQUARE FEET)
MORE OR LESS

OWNER: FARLEY

LOCATION: 709 40TH AVE NORTH
NASHVILLE, TN 37209
21ST COUNCIL DISTRICT
DAVIDSON COUNTY, TENNESSEE

RECORDED: LOT 19 PT 20 & 34 CENTUM
INSTRUMENT # 20030212-0003851
R.O.D.C. TN

STANDARD NOTES:
1. THERE SHALL BE NO VERTICAL OBSTRUCTIONS WITHIN THE SIDEWALK.
2. THE CONTRACTOR SHALL CONTACT THE DEPARTMENT OF PUBLIC WORKS – PERMITS OFFICE 615-862-8782 FOR FORMS, INSPECTIONS PRIOR TO POURING SIDEWALKS OR RAMPS.
3. SIDEWALK CROSS SLOPE SHALL NOT EXCEED 2%.
4. ALL CONSTRUCTION WITHIN RIGHT OF WAY SHALL COMPLY WITH THE AMERICANS WITH DISABILITIES ACT (ADA) IN EFFECT AT THE TIME ACTIVITIES ARE PERFORMED.

REVISED 1-7-25 PER COMMENTS
REVISED 4-24-23 ADDED SHEET 2
REVISED 4-3-23 ADDED LEGEND

811
Know what's below.
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PAGE 2 OF 2

SITE PLAN OF

709 40TH AVENUE NORTH TOWNHOMES A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

21ST COUNCIL DISTRICT
PARCEL ID 091120310100
NASHVILLE, DAVIDSON COUNTY, TENNESSEE

CROW LAND SURVEYING
210 OLD HICKORY BLVD. UNIT #17
NASHVILLE, TN 37221
C - (615) 948-9021 PH - (615) 448-7750
crowlandsurvey@gmail.com

3-17-25

202305110035319

EXHIBIT "C"

CHARTER OF

709 40TH AVENUE NORTH TOWNHOMES

[SEE ATTACHED]

Karen Johnson Davidson County
Batch# 1002023 CHARTER
05/11/2023 09:45:30 AM 5 pgs
Fees: $7.00 Taxes: $0.00
20230511-0035133

FILED

CHARTER

OF

709 40TH AVENUE NORTH TOWNHOMES HOMEOWNERS ASSOCIATION, INC.

The undersigned natural person, having capacity to contract and acting as the incorporator of a corporation under the Tennessee Nonprofit Corporation Act, adopts the following Charter for such corporation:

1. The name of the corporation is 709 40TH AVENUE NORTH TOWNHOMES HOMEOWNERS ASSOCIATION, INC., a Tennessee nonprofit corporation.
2. The name of the initial registered agent of the corporation is 709 40TH AVENUE NORTH TOWNHOMES HOMEOWNERS ASSOCIATION, INC., a Tennessee nonprofit corporation.
3. For purposes of Tennessee Department of State, Division of Business Services, Rule 1360-05-01-.01, the email address for 709 40TH AVENUE NORTH TOWNHOMES HOMEOWNERS ASSOCIATION, INC. is bneihoff@gmail.com.
4. The address of the initial registered office of the corporation is: 2610 Westwood Drive, Nashville, TN 37204.
5. The address of the principal office of the corporation in the State of Tennessee shall be: 2610 Westwood Drive, Nashville, TN 37204.
6. The name and address of the incorporator is Jeremy H. Cherry, Esq., Ortale Kelley, Law Firm, 330 Commerce Street, Suite 110, Nashville, Tennessee 37201.
7. The corporation is a mutual benefit corporation.
8. The corporation is not for profit.
9. This corporation is organized for the purpose of providing for the ownership, operation, maintenance, preservation, development, and control of all property known as 709 40TH AVENUE NORTH TOWNHOMES as established by a

20230511-0035133 Agent: 05/11/2023 09:45:30 AM Page: 1 of 5 Fees: $7.00 Taxes: $0.00 Karen Johnson Davidson County

Declaration of Covenants, Conditions and Restrictions and Bylaws for the benefit and use of the owners and residents of the Units indicated thereon and in pursuit thereof to:

a. Acquire, by gift, purchase or otherwise, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in accordance with the law and in connection with the purposes of this corporation;

b. Fix, levy, collect and enforce payment by any lawful means of all charges and assessments levied or assessed against members of the corporation and to pay all expenses incident to the conduct of the business of the corporation including all licenses, taxes, or other charges levied against the property of the corporation;

c. Borrow money and mortgage, pledge, or deed in trust any or all of its real or personal property as security for money borrowed for debts incurred;

d. Contract or otherwise provide for necessary or desired maintenance, or improvement, repair, restoration or alteration of its real and personal property, and to purchase, if necessary, equipment, and employ personnel to achieve these purposes;

e. Represent and promote the welfare of the owners and residents of the Units located within 709 40TH AVENUE NORTH TOWNHOMES and to have and exercise any and all rights, powers, and privileges which a corporation not for profit organized under the Tennessee General Corporation Act may now or hereafter have or exercise; and

f. Generally engage in any other lawful endeavor or activity in furtherance of the foregoing, so long as such endeavor or activity does not prevent the

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corporation from being, or maintaining its status as, a homeowners association as defined by Section 528(c)(1) of the Internal Revenue Code of 1986 or corresponding section of any future income tax code.

10. This corporation is to have members. Every person or entity who is a record owner of a fee interest in any Unit located within 709 40TH AVENUE NORTH TOWNHOMES shall be a member of the corporation. Nothing herein is intended to include persons or entities holding any interest intended merely as security for the performance of an obligation. Ownership of a Unit shall be the sole qualification for members, and a membership shall not be transferable other than as it is appurtenant to ownership of a Unit. When more than one (1) person holds an interest in a Unit, only one (1) certificate of membership shall issue and the rights and privileges accruing to such membership shall be assigned among the owners as they may agree.

11. To the extent allowed by the laws of the State of Tennessee, no present or future directors of the corporation (or his or her estate, heirs and personal representatives) shall be liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director of the corporation. Any liability of a director shall be further eliminated to the fullest extent allowed by the laws of the State of Tennessee, as may hereafter be adopted or amended.

12. With respect to claims or liabilities arising out of service as a director or officer of the corporation, the corporation shall indemnify and advance expenses to each present and future director and officer to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

13. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its directors, officers, members or other private individuals or

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05/11/2023 01:54 PM
$25.00

persons, except that the corporation shall be authorized and empowered to (a) pay reasonable compensation for goods and services rendered, (b) rebate excess membership dues, fees or assessments, and (c) make payments in furtherance of the purposes set forth herein.

14. Upon dissolution, after all creditors of the corporation have been paid any excess membership dues, fees or assessments have been rebated, its assets shall be distributed to the then current Unit Owners.

15. This Charter may be amended upon the approval of at least three-fourths (3/4) vote of eligible Unit Owners, however, this Charter may be amended unilaterally: (1) by the incorporator up to the date the last Unit is conveyed to an owner other than Declarant or builders holding title solely for purposes of development and sale; or (2) by the Board of Directors at any time as permitted under Tenn. Code Ann. §§ 48-51-101 *et seq.*

DATED this 8th day of May, 2023.

Jeremy H. Cherry, Incorporator
Ortale Kelley Law Firm
330 Commerce St. Suite 110
Nashville, Tennessee 37201
Phone: (615) 256-9999
Fax: (615) 726-1494

202305110035133
202305110035319

B1347-0541 05/25/2023 1:54 PM Received by Tennessee Secretary of State Fee Waiver

Tennessee Certification of Electronic Document

I, Jeremy H. Cherry, do hereby make oath that I am a licensed attorney and/or the custodian of the original version of the electronic document tendered for registration herewith and that this electronic document is a true and exact copy of the original document executed and authenticated according to law on May 8, 2023. (Date of document)

Affiant Signature

May 9, 2023
Date

State of Tennessee

County of Davidson

Sworn to and subscribed before me this 9th day of May, 2023.

Notary's Signature

My Commission Expires:

(*SEAL*)

MICHELLE MARIE MONTAGUE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES JULY 6, 2026

EXHIBIT "D"

BYLAWS FOR

709 40TH AVENUE NORTH TOWNHOMES

[SEE ATTACHED]

BYLAWS OF

709 40TH AVENUE NORTH TOWNHOMES HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

Members (Unit Owners)

Section 1. Eligibility. The members of 709 40TH AVENUE NORTH TOWNHOMES HOMEOWNERS ASSOCIATION, INC., a Tennessee not-for-profit corporation, shall consist of the Unit Owners of the property known as 709 40th AVENUE NORTH TOWNHOMES located at Nashville, Davidson County, Tennessee (the "Property"). If a Unit Owner is a trust, then the member shall be a beneficiary of such trust, and if a Unit Owner or such a beneficiary is a corporation or partnership, the member may be an officer, partner or employee of such Unit Owner or beneficiary.

Section 2. Secession. The membership of each Unit Owner shall terminate when he ceases to be a Unit Owner, and upon the sale, transfer, or other disposition of his ownership interest in the property, his membership in the Association shall automatically be transferred to the new Unit Owner succeeding to such ownership interest.

Section 3. Regular Meetings. The first regular meeting of the Unit Owners (the "First Meeting") may be held, subject to the terms hereof on any date, at the option of the Board. All such meetings of Unit Owners shall be held at such place in Davidson County, Tennessee, and at such time as specified in the written notice of such meeting which shall be delivered to all Unit Owners at least ten (10) days prior to the date of such meeting. At the discretion of the Board and subject to the same notice, quorum, proxy, voting, and all other requirements within the Declaration, Bylaws, and Tennessee Law, regular meetings of the Association may be conducted by virtual means, as long as the identity of each Member may be authenticated and the vote of each Member at such meeting can be verified as being cast by such Member during the meeting. If a meeting is conducted by virtual means, each Member whose identify can be verified and who can simultaneously hear and see the meeting is deemed to be present in person at the meeting.

Section 4. Special Meetings. Special meeting of Unit Owners may be called by a majority of the Unit Owner. Special meetings shall be called by delivering written notice to all Unit Owners not less than ten (10) days prior to the date of the meeting, stating the date, time and place of the special meeting and the matters to be considered. At the discretion of the Board and subject to the same notice, quorum, proxy, voting, and all other requirements within the Declaration, Bylaws, and Tennessee Law, special meetings of the Association may be conducted by virtual means, as long as the identity of each Member may be authenticated and the vote of each Member at such meeting can be verified as being cast by such Member during the meeting. If a meeting is conducted by virtual means, each Member whose identify can be verified and who can simultaneously hear and see the meeting is deemed to be present in person at the meeting.

Section 5. Delivery of Notice of Meetings. Notices of meetings shall be delivered either personally or by mail to Unit Owners at the addresses given to the Board by Unit Owners for such

purpose, or to a Unit Owner's Unit if no separate address for such purpose has been given to the Board.

Section 6. Voting. Each Unit shall have one (1) vote for each Unit it owns. If any Unit Owner consists of more than one (1) person, the voting rights of such Unit Owner shall not be divided, but shall be exercised as if the Unit Owner consisted of only one (1) person in accordance with the proxy or other designation made by the persons constituting such Unit Owner. Developer shall be permitted to a certain amount of votes pursuant to the Declaration.

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

At the discretion of the Board and subject to any applicable requirements within the Declaration, Bylaws, and Tennessee law, all Association business, whether taken at a duly called meeting of the Members, or action without a meeting, may be voted upon by ballot, whether written or electronic, so long as:

1) Quorum requirements for such action may be established and documented; the identity or each Member may be authenticated;

2) The vote of each Member can be verified as being cast by such Member;

3) That only one (1) vote per Lot can be verified as having been cast; and,

4) If voting by secret ballot is required, that secret ballot voting can be ensured.

Any proposed voting action by ballot must: (i) be in the form of a document; (ii) set forth each proposed action; (iii) if the proposed action is for the election of directors, provide an opportunity to vote for, or withhold a vote for each candidate for election as director; and (iv) provide an opportunity to vote for, against, or abstain from each proposed action.

Any solicitation for vote by ballot must: (i) indicate the number of responses needed to meet quorum requirements, if a quorum is required for such action; (ii) state the percentage of approvals necessary to approve each matter other than the election of directors; and (iii) specify the time by which the ballot must be received by the Association.

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

ARTICLE II

Board of Directors

Section 1. Number, Election and Term of Office. The Board of Directors of the Association (referred to in the Horizontal Property Act of the State of Tennessee as the "board of administrators" and sometimes referred to herein as the "Board") shall consist of two (2) members (hereinafter referred to as "Directors"). Every Director shall hold office for a term of three (3) years and until his successor shall be elected and qualified.

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

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

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

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

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

Section 7. Quorum. All of Directors shall constitute a quorum.

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

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

b) To administer the affairs of the Association and the Property;

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

d) To formulate policies for the administration, management and operation of the

Property and the Common Elements;

e) To adopt rules and regulations, with written notice thereof to all Unit Owners, governing the administration, management, operation and use of the Property and the Common Elements, and to amend such rules and regulations from time to time and to establish reasonable financial assessments for infractions thereof;

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

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

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

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

j) To fix the estimated annual budget, and to provide the manner of assessing and collecting from Unit Owners their respective shares of such estimated expenses, as hereinafter provided;

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

l) 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;

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

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

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

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

ARTICLE III

Officers

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

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

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

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

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

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

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

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

ARTICLE IV

Assessments

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

repairs, replacements, landscaping, insurance, fuel, power, and all other common expenses.

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

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

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

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

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

ARTICLE V

Contractual Powers

No contract or other transaction between this 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, is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction or because his or their votes 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 such Director or Directors; or

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

Common or interested Directors 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.

ARTICLE VI

Amendments

These Bylaws may be amended or modified from time to time by action or approval of a majority of the total votes of the Association. Such amendments shall not take effect until they are recorded in the Register's Office of Davidson County, Tennessee.

ARTICLE VII

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 Bylaws, 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 Bylaws has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in

Section 1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonable incurred by him in connection therewith.

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

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 interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements. 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 his percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements. The indemnification provided by this Article VII 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 VIII

Mortgages

Section 1. Notice to Board. A Unit Owner who mortgages his Unit shall notify the Board of the name and address of his mortgagee and shall file a conformed copy of the note and deed of trust or mortgage with the Board.

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

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

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

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

ARTICLE IX

Definition of Terms

The terms used in these Bylaws, to the extent they are defined therein, shall have the same meaning as set forth in the Declaration for **473 TIMMONS COTTAGES**, as amended, of record in the Office of the Register of Deeds for Davidson County, Tennessee. The term "member", as used in these Bylaws, means "Unit Owner" as defined in the Declaration.

ARTICLE X

Conflicts

These Bylaws are set forth to comply with the requirements of Tenn. Code Ann. §§66-27-101 *et seq.*, as it may be amended from time to time (the "Act"), and to allow the Bylaws to control in specific situations where such law allows. In the event any of the Bylaws conflict with the provisions of the Act or of the Declaration, the provisions of the Act or of the Declaration, as the case may be, shall control.

[CERTIFICATION PAGE TO FOLLOW]

The foregoing Bylaws are hereby adopted as the Bylaws of 709 40TH AVENUE NORTH TOWNHOMES HOMEOWNERS ASSOCIATION, INC. by the undersigned as of this the 11 day of MAY, 2023.

Brian Neihoff

Brian Neihoff, Secretary

EXHIBIT "E"

ATTORNEY'S OPINION LETTER FOR

709 40TH AVENUE NORTH TOWNHOMES,

A HORIZONTAL PROPERTY REGIME

WITH PRIVATE ELEMENTS

[SEE ATTACHED]

ORTALEKELLEY LAW FIRM

Jeremy H. Cherry
jcherry@ortalekelley.com
Direct: (615) 780-7513
Thursday, May 11, 2023

709 40th Avenue North Townhomes Homeowners Association, Inc.
Attn: Brian Neihoff
2610 Westwood Drive
Nashville, TN 37204

Re: LEGAL OPINION FOR 473 TIMMONS COTTAGES, A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS (PUD)

Dear Mr. Neihoff:

I am an attorney licensed to practice in the State of Tennessee. Pursuant to Tenn. Code Ann. § 66-27-103(b), this letter shall serve as the requisite attorney's opinion in which I certify that upon the recording of this legal opinion and the following additional documents, all legal requirements for the creation of a Planned Unit Development under the terms of the above-referenced statute will have been met:

1) The Declaration of Covenants, Conditions and Restrictions for 709 40TH Avenue North Townhomes, a Horizontal Property Regime with Private Elements (PUD);

1) Charter of 709 40TH Avenue North Townhomes Homeowners Association, Inc., a not-for-profit corporation;

2) Bylaws of 709 40TH Avenue North Townhomes Homeowners Association, Inc., a not-for-profit corporation; and

3) The plat/site plan exhibits for 709 40TH Avenue North Townhomes, a Horizontal Property Regime with Private Elements (PUD), which plat/site plan exhibits show the units, private elements, common elements, and limited common elements.

Should you have any questions, please feel free to contact me.

Very truly yours,

ORTALE KELLEY LAW FIRM

Jeremy H. Cherry

202305110035319

Tennessee Certification of Electronic Document

I, Jeremy H. Cherry, do hereby make oath that I am a licensed attorney and/or the custodian of the original version of the electronic document tendered for registration herewith and that this electronic document is a true and exact copy of the original document executed and authenticated according to law on 5/11/2023 (date of document).

Affiant Signature

5/11/2023
Date

State of Tennessee

County of Davidson

Sworn to and subscribed before me this 11 day of May, 2023.

Notary's Signature

MY COMMISSION EXPIRES: 09/07/2026

NOTARY'S SEAL

