

This instrument prepared by:
J. Quinton Homer -- Attorney
PO Box 90509
Nashville, TN 37209
(615) 708-0555

Karen Johnson Davidson County
Batch# 518409 DEEDMAST
11/18/2020 03:35:13 PM 37 pgs
Fees: \$187.00 Taxes: \$0.00



20201118-0136049

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR**

1220 NORTH 5TH STREET TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration"), is entered into as of the 30th day of October, 2020, by RISE DEVELOPMENT, LLC (herein referred to, together with their heirs and assigns, as "Developer");

WITNESSETH:

WHEREAS, Developer is the legal title holder in fee simple of a certain tract of real estate located in the County of Davidson, State of Tennessee, more particularly described in Exhibit A (the "Real Property"); and

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

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

NOW, THEREFORE, Developer, as the legal titleholder of the Real Property, and for the purposes above set forth, declares as follows:

1. **DEFINITIONS.** In addition to the terms defined elsewhere in this Declaration, the following terms when used herein shall have the meanings ascribed to them in this section,

unless the context otherwise requires. All capitalized terms not otherwise defined herein but defined in the Act, shall be deemed to have the meaning ascribed to them in the Act, to the extent such terms are defined therein:

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

(b) "Association" means the non-profit Tennessee corporation known as the 1220 North 5th Street Townhome Association, Inc., which includes as members all of the Unit Owners.

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

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

(e) "Common Elements" means all real property and improvements, owned by the Association for the common use and enjoyment of the Owners. Ownership of the Common Elements shall remain undivided and shall not be the subject of an action for partition. The Common Elements shall be all of the Property except the Units, Private Elements and any Limited Common Elements.

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

(g) "Developer" means Rise Development, LLC, its successors, heirs and assigns, provided such successors, heirs or assigns are designated in writing by Developer as a successor or assignee of the rights of Developer set forth herein.

(h) "Developer Control Period" means the period commencing on the date set forth above, and expiring on the date which is the earlier of:

- i. One hundred twenty (120) days after the date by which one hundred percent (100%) of the Units have been conveyed to Owners other than the initial Developer or a successor Developer;
- ii. Five (5) years after the first conveyance of a Unit to a purchaser other than the initial Developer or a successor Developer; or
- iii. The surrender in writing by Developer of the authority to appoint and remove officers and directors of the Association.

(i) "General Common Elements" means and includes Common Elements.

(j) "Initial Sales Period" means the period commencing on the date set forth above and expiring on the date that Developer no longer owns any of the Units and each Unit sold by Developer is occupied by the purchasers or an Occupant.

(k) "Limited Common Elements" means all Common Elements contiguous to and serving exclusively a single Unit or one or more adjoining Units as an inseparable appurtenance thereto, the enjoyment, benefit and/or use of which is reserved to the lawful Occupants of such Unit or Units either in this Declaration, on the Plat or by the Board. This includes things such as driveways, sidewalks, decks, and patios that exclusively serve any single Unit.

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

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

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

(o) "Occupant" means a person or persons lawfully permitted to occupy all or a portion of any Unit, regardless of whether said person is a Unit Owner.

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

(q) "Ownership Percentages" means the ownership percentages set forth on Exhibit D, as the same may be amended as set forth herein.

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

(s) "Plat" means the representation of the Property prepared by the Developer and attached hereto as Exhibit C, showing the number of each Unit, and expressing its location and other data necessary for identification of each Unit and its respective Private Elements.

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

(u) "Project" means the entire Real Property including all structures and other improvements thereon.

(v) "Property" means all of the Real Property, and all structures and other improvements now or hereafter erected, constructed or contained therein or thereon, including without limitation the buildings and all easements, rights, privileges and appurtenances belonging or in any way pertaining thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners.

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

(x) "Rules and Regulations" refer to the rules and regulations concerning the use of the Units and the Common Elements, as adopted from time to time by the Board in accordance with this Declaration and the Bylaws.

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

2. **SUBMISSION OF PROPERTY TO THE ACT.** Developer does hereby submit and subject the Property to the provisions of the Act. To the extent of any contradiction between a provision of this Declaration and a provision of the Act, the Act shall control.

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

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

5. **ASSOCIATION OF UNIT OWNERS AND ADMINISTRATION AND OPERATION OF THE PROPERTY.**

(a) **The Association.** The Association, which has been or will be incorporated, shall be the governing body for all of the Unit Owners, for the maintenance, repair, replacement, administration and operation of the Property, as provided in the Act, this Declaration and the Bylaws. The Bylaws for the Association shall be the Bylaws attached to this Declaration as Exhibit B. The Board shall be elected and shall serve in accordance with the provisions of the Bylaws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time, as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of the Unit Owners in accordance with the provisions of the Act, this Declaration and the Bylaws. Each Unit Owner shall be a member of the Association so long as he is a Unit Owner. A Unit Owner's membership shall automatically terminate

when he ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the association shall be equal to the number of Units shown on the Plat. Each Unit Owner's respective Ownership Percentage in the Association is set forth in Exhibit D.

(b) Management of Property. The Board shall have the authority to engage the services of a Manager 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 subparagraph 5(c), below. The Board may require that Manager have fidelity bond coverage on its employees handling Association funds. The cost of such services shall be a common expense, as defined in paragraph 9, below.

(c) Initial Management Agreement. Prior to the appointment of the First Board as provided herein, the Developer, on behalf of the Association, may employ a management company, to act as Manager for the Property; provided, however, that such agreement shall be for a term to end no greater than three (3) years after the end of the Developer Control Period. The Manager engaged by the Developer pursuant to the terms of this Subsection 5(c) may be with an affiliate of the Developer, so long as the fees charged by such Manager do not exceed market rates charged by property managers of similar properties in the Nashville, Tennessee area.

(d) Use by Developer. During the Initial Sale Period, Developer and Developer's agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access the Project and granted ingress to and egress from the Property as may be required for purposes of selling the Units. In addition, during the Initial Sales Period, the Developer and its employees may rent, lease, use and show one or more of such unsold or unoccupied Units as a model Unit or Units and may rent, lease or use one or more of such unsold or unoccupied Units as a sales office, and may maintain customary signs in connection therewith.

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

6. BOARDS DETERMINATION BINDING. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any agreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of this Declaration or the Bylaws, the determination thereof by the Board shall be final and binding on each and all such Unit Owners.

7. **OWNERSHIP OF THE COMMON ELEMENTS.** The Association shall own the Common Elements, and the Common Elements are hereby vested in the Association. Each Unit Owner shall be allocated a percentage of undivided ownership in the Association as set forth in **Exhibit D**. The Ownership Percentages shall remain constant unless amended pursuant to the reservation set forth herein, or unless hereafter changed by recorded amendment to this Declaration as provided for herein or consented to in writing by the necessary Unit Owners. Said ownership interest shall be undivided interest and the undivided interest 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 corresponding ownership appurtenant to said Unit. The undivided percentage of ownership in the Common Elements corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit. Such Common Elements are not and shall not be the subject of any partition action.

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

9. **COMMON EXPENSES.**

(a) Each Unit Owner shall pay his proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in accordance with this Declaration and the Bylaws (which expenses are herein sometimes referred to as "common expenses"), including, but not limited to, the maintenance and repair of the Common Elements and any and all replacements and additions thereto. Such proportionate share of the common expenses for each Unit Owner shall be in accordance with his Ownership Percentage; provided, however, that any such expenses with respect to Limited Common Elements shall be borne by the Unit Owners to whose Units such Limited Common Elements are appurtenant, in accordance with such Unit Owners' percentage of ownership interest therein. Payment of common expenses, including any prepayment thereof required by a contract for sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. No Unit Owner shall be exempt from payment of his proportionate share of the

common expenses by waiver of the use or enjoyment of the Common or Limited Common Elements or by abandonment of his Unit. If any Unit Owner shall fail or refuse to make any such payment of common expenses when due, the amount thereof, together with the interest thereon at the maximum allowable rate at law per annum from the date that said common expenses become due and payable, plus reasonable attorney's fees incurred by the Association in the collection thereof or the enforcement of the lien herein provided, shall constitute a lien on the interest of such Unit Owner in his Unit and in the Property as provided in the Act. The sale or conveyance of a Unit shall in all cases be subject to all unpaid assessments against the Unit Owner thereof for his pro rata share in the common expenses, and if the same are not paid by the owner thereof prior to any sale or conveyance, shall be a lien against the Unit and shall be payable by the new Unit Owner thereof. Likewise, all taxes and other levies and assessments by governmental taxing bodies shall be a lien against individual Units.

(b) Any common expenses that are incurred through or occasioned by the use or enjoyment of any Limited Common Elements that benefit or are intended to benefit less than all of the Units, shall not be assessed against all of the Units pursuant to Section 9(a), but shall be specifically assessed equitably among those Units that are so benefited or intended to be benefited. Additionally, to the extent that any Limited Common Elements or other services provided to the Property are utilized by a Unit Owner in a manner that exceeds the customary usage of other Owners, the Board of the Association shall have the right to charge appropriate amounts to such Unit Owner as determined by the Board of the Association in its reasonable discretion. Notwithstanding the foregoing, it is acknowledged and agreed that the utility lines, drives and driveways to the Units, and alleyways forming a part of the Project shall be considered Common Elements for purposes of this Declaration up to the point where the same connect to a Unit, and shall be maintained, repaired and replaced by the Association, notwithstanding the fact that such drives or utility lines serve less than all of the Units.

(c) If the Developer holds one or more unfinished Units for sale in the ordinary course of business, the Developer shall not be assessed for common expenses for such Units prior to the completion of such Unit. Completion of a Unit shall be deemed to occur when the title to such Unit is conveyed by the Developer to a subsequent Unit Owner that is not a successor Developer or when a final Use and Occupancy permit for such Unit is issued by the Metropolitan Nashville Department of Codes Administration, whichever occurs first. If the Developer holds one or more Units for sale in the ordinary course of business after their completion, the Developer shall not be assessed as a Unit Owner for capital improvements or special assessments without written approval from the Developer, although the Developer may be assessed for common expenses as a Unit Owner for the Unit(s) it holds after the Unit is completed.

10. MORTGAGES AND DEEDS OF TRUST.

(a) Each Unit Owner shall have the right, subject to the provisions hereof, to make separate mortgages and deeds of trust for his respective Unit together with his respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to grant, make or create, or cause to be granted, made or created, any mortgage, deed of trust or other lien on or affecting the Property or any part thereof,

except only to the extent of his own Unit and the respective percentage interest in the Common Elements corresponding thereto.

(b) The lien for assessments payable by a Unit Owner shall be subordinate to the lien of a recorded first Mortgage or Deed of Trust on the interest of such Unit Owner, except for the amount of the proportionate share of common expenses which become due and payable from and after the date on which the mortgagee or beneficiary thereunder either takes possession of the Unit encumbered thereby, accepts a conveyance of any interest therein (other than as security) or forecloses its Mortgage or Deed of Trust and except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessment or charges to all Units including the mortgaged Unit. This subparagraph (b) shall not be amended, changed, modified or rescinded without the prior written consent of all Mortgagees and Beneficiaries of record. A Unit Owner who mortgages his Unit and/or the mortgagee or beneficiary under such Mortgage, shall notify the Board of the name and address of his mortgagee and shall file a conformed copy of the Deed of Trust or Mortgage with the Board. This Paragraph shall not be amended, changed, modified or rescinded without the prior written consent of all holders of record of Mortgage and Deed of Trust liens against the Units.

11. **SEPARATE REAL ESTATE TAXES.** Real estate taxes shall be separately taxed to each Unit Owner for his Unit and its appurtenant interest in the Common Elements and Limited Common Elements, and its corresponding interest in the Association as provided in the Act. In the event that such taxes for any year are not separately taxed to each Unit Owner, but rather are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective Ownership Percentage, and, in said event, such taxes shall be a common expense.

12. **INSURANCE.** The Board may obtain insurance for the Property and the Common Elements against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions, for the full insurable replacement cost of the Property and the Common Elements, and against such other hazards and for such amounts as the Board may deem advisable. Without limitation, the Board may obtain insurance covering the Units and Private Elements, including the structure, exterior walls and roofs. Unit Owners should provide a copy of the master policy to their agents to ensure appropriate coverage. Insurable replacement cost shall be deemed the cost of restoring the Property and the Common Elements, or any part thereof, to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Board, as the Trustee for the Unit Owner in proportion to the Unit Owner's respective prorated Unit square footage and for the holders of mortgages on the Units, if any. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against the Unit Owners. The premiums for such insurance shall be a common expense; however, premiums for such insurance shall be separately billed to Unit Owners based on each Units prorated square footage.

In the event of damage to or destruction of any of the Property or any Common Elements as a result of fire or other casualty covered by insurance proceeds (unless more than two-thirds (2/3) of all buildings require reconstruction), the Board shall, in its sole and

absolute discretion, determine and without intervention of any Unit Owner arrange for the prompt repair and restoration of the damaged portions of the Property and all Common Elements substantially in accordance with the original plans and specification therefor. Where the insurance indemnity is insufficient to cover the cost of such repairs and restoration, the deficit shall be paid by all Unit Owners with each Unit Owner to bear an equal proportion thereof. Notwithstanding the above, unless the Board does carry hazard insurance covering the damage to the Property and Common Elements, the Board shall not be responsible for the repair, replacement or restoration of any Unit or Private Elements for which the responsibility or maintenance and repair is that of a Unit Owner, or for furniture, furnishings, fixtures, appliances, or equipment installed in the Unit by a Unit Owner or occupant.

The Board may also obtain comprehensive public liability insurance, in such amounts as it deems desirable, and workmen's compensation insurance and other liability insurance in such amounts as it deems desirable, insuring each Unit Owner, mortgagee of record, the Association, its officers, directors, and employees, Owner, and the Managing Agent, if any, from liability in connection with the Property. The premiums for such insurance shall be Common Expenses; however, premiums for such insurance shall be separately billed equally to each Unit Owner.

The Board may also obtain Fidelity Coverage covering officers, directors and employees who handle or are responsible for handling Association funds. Such bonds shall be in such amounts as the Board may determine, but in no event less than one hundred fifty percent (150%) of the monthly operating expenses of the Association and shall contain waivers of any defense based upon the exclusion of persons serving without compensation.

The Board may also obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Property and each member of the Board and officer of the Association, and each member of any committee appointed pursuant to the By-Laws of the Association, from liability arising from the fact that said person is or was a director or officer of the Association, or a member of such a committee .

In the event the Board does not maintain insurance, each Unit Owner shall be responsible for obtaining hazard insurance which includes liability coverage on his Unit, the contents of his Unit and Private Elements, and the Limited Common Elements serving his Unit, as well as additions and improvements thereto, and those parts of the Unit for which the responsibility of maintenance and repair is that of the Unit Owner, and for decorations, furnishings, and personal property therein, and personal property stored elsewhere on the property, if any. Each Unit Owner shall be required to list the Association as an additional insured on said Unit's hazard insurance policy.

13. **LANDSCAPING, MAINTENANCE, REPAIRS AND REPLACEMENTS.**

Each Unit Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within and to the exterior of his Unit and its Private Elements and Limited Common Elements. Except to the extent hereinafter set forth, maintenance of, repairs to and replacement within the General Common Elements shall be the

responsibility of and shall be furnished by the Association, and the cost thereof shall be part of the Common Expenses, subject to Paragraph 9(a) herein and further subject to the By-Laws, and Rules and Regulations of the Association. The expenses for the maintenance, repair, or replacement of a Unit's water heater, furnace, air conditioner, heating and air conditioning ducts, and plumbing and electrical wiring and other items including, but not limited to the Limited Common Elements, serving only such Unit, shall be borne by the Owner of the Unit to which such Limited Common Elements are appurtenant. The Board shall direct Unit Owners who stand to be benefited by maintenance of, repairs to, and replacement of the exterior of said Unit, its Private Elements and/or within the Limited Common Elements to arrange for such maintenance, repairs and replacements in the name and for the account of such benefited Unit Owners, pay the cost thereof with their own funds, and procure and deliver to the Board such lien waivers and contractor's and subcontractor's sworn statements as may be required to protect the property from all mechanic's and materialman's lien claims that maintain, repair or replace the electrical wiring, plumbing, or other utilities of a Unit. Should the benefited Unit Owner fail or refuse to maintain, repair and/or replace, as directed by the Board, the exterior of the benefited Unit, its Private Elements, and/or within its Limited Common Elements, the Board or any other Unit Owner (or Owners) may cause said maintenance of, repairs to and/or replacements be made to the exterior of said Unit, its Private Elements and/or within its Limited Common Elements, and perfect remedies as recited in Paragraph 18 hereinafter recited.

If, due to the act or neglect of a Unit Owner, or his agent, servant, tenant, family member, invitee, licensee, or household pet, damage shall be caused to the Private Elements owned by others, or if general maintenance of utility lines, etc. are required and such repair or damage is on another Unit Owner's Private Element, then the Unit Owner which said utility services shall pay for such damage or such maintenance, repairs and replacements.

A joint and mutual easement hereby exists for any installation, maintenance, repair and replacement of any and all pipes, wires, conduits, or other utility lines running through or around and 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 units and each Unit Owner if necessary, to maintain their Unit by accessing the other Unit's Private Elements. Reasonable notice to access the adjoining Unit's private Elements shall be given to the affected Unit Owner unless access is required due to emergency circumstances.

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

In order to maintain a consistent appearance throughout the Property, all maintenance to the exterior of the Units shall be approved by the Board in advance. This also includes the Board having the power to demand a Unit Owner, at the expense of the Unit Owner, make any maintenance improvements to the exterior of their Unit including to things such as roofing,

exterior painting, exterior facade, windows, and exterior doors.

14. **ALTERATIONS, ADDITIONS OR IMPROVEMENTS.** The Common Elements, or any additions or improvements thereto, shall not be altered or changed by any Unit Owner, without the prior written consent of the Board. The Board may authorize, and charge as common expenses alterations, additions and improvements of the Common Elements as provided in the Bylaws. Any Unit Owner may make non-structural alterations, additions or improvements within the Unit without the prior written approval of the Board, but such Unit Owner shall be responsible for any damages to other Units, the Common Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements; provided, that such alterations, additions or improvements (i) are done in accordance with all applicable laws, codes or ordinances, (ii) do not adversely affect the structural integrity of the Unit or the mechanical, electrical, or plumbing systems forming a part of the Common Elements, and (iii) do not unreasonably disturb the other Occupants of the Project.

15. **DECORATIONS, CLEANING.** Each Unit Owner, at his own expense, shall furnish and be responsible for all decorations and cleaning within his own Unit and the Limited Common Elements serving his Unit, as may be required from time to time, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting, and other furnishings and decorations. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceiling of his Unit. All gutters, windows and screens of a Unit shall be cleaned and washed at the expense of the Unit Owner of that Unit.

16. **ENCROACHMENTS.** If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements, or if any Unit shall actually encroach upon another Unit, as the Common Elements and Units are shown by the Plat, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved, to the extent of such encroachments, so long as the same shall exist.

17. **USE AND OCCUPANCY RESTRICTIONS.**

(a) **Use and Occupancy Restrictions.** No part of the Units or the Common Elements may be used for purposes other than residential use as further described herein. Leasing or renting of any Unit shall be permitted pursuant to such terms as reasonably determined by the Board. Any Unit may be offered by its owner to the public at large for short or long term rental in compliance with Metro Nashville and Davidson County Codes. **IT IS/WAS THE PRIMARY INTENT OF THE DEVELOPER SINCE THE TIME OF ACQUISITION OF THE PROPERTY THAT THE UNITS BE OFFERED ON A SHORT TERM RENTAL BASIS IN COMPLIANCE WITH METRO NASHVILLE AND DAVIDSON COUNTY CODES.** No Unit may be conveyed pursuant to a time-sharing arrangement.

Notwithstanding the foregoing, no part of the Property may be used for purposes other than as allowed by municipal zoning laws.

(b) **Improper Activities.** No Owner or Occupant shall permit anything to be

done or kept in or around his Unit which would be in violation of any law, rule or ordinance, would constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project.

(c) Signs. No sign of any kind shall be displayed to the public view from any Unit, Common Element or elsewhere in the Project without the approval of the Board, except:

- i. such signs as may be used by Developer in connection with the development and sale of Units;
- ii. such signs as may be required by legal proceedings, or the prohibition of which is precluded by law;
- iii. such signs as may be required for property identification, traffic control and regulation of streets of the Project; or
- iv. one standard sized real estate/realtor "for sale" or "for lease" sign per Unit; PROVIDED HOWEVER, that any such signage shall require the approval of the Developer if displayed at any time during the Developer Control Period.

(d) Pets. The Board may adopt specific Rules and Regulations concerning pets located on the Property.

18. REMEDIES. In the event of any violation of the provisions of the Act, this Declaration, the Bylaws or the Rules and Regulations by any Unit Owner (either by his own conduct or by the conduct of any other Occupant of his Unit or any invitee or licensee thereof), then the Association, acting through the Board, shall have each and all of the rights and remedies that may be provided for in the Act, this Declaration, the Bylaws or the Rules and Regulations, or that may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting Unit Owner and/or other Occupant for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief.

ALL EXPENSES OF THE BOARD OR UNIT OWNER IN CONNECTION WITH ANY SUCH ACTIONS OR PROCEEDINGS, INCLUDING COURT COSTS AND ATTORNEYS' FEES AND OTHER FEES AND EXPENSES AND ALL DAMAGES, LIQUIDATED OR OTHERWISE, TOGETHER WITH INTEREST, THEREON AT THE MAXIMUM ALLOWED RATE BY LAW PER ANNUM UNTIL PAID, SHALL BE CHARGED TO AND ASSESSED AGAINST SUCH DEFAULTING UNIT OWNER, and shall be added to and deemed part of his respective share of the common expenses, and the Association shall have a lien for all of the same, as well as for non-payment of his respective share of the common expenses, upon (i) the Unit and its appurtenant interest in the Common Elements of such defaulting Unit Owner (ii) all of his additions and improvements thereto, and (iii) 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 hereinabove set forth in Paragraph 10(b). In the event of any such

default by any Unit Owner, the Board and the manager or Manager, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner and secured by the lien hereinabove provided. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained shall give the Association, acting through the Board, the right, in addition to any other rights provided for in this Declaration:

(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 summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or

(c) To take possession (either peaceably or forcibly without liability to such Unit Owner for such entry) of such Unit Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law.

If any Unit Owner (either by his own conduct or the conduct of any other Occupant of his Unit or any invitee or licensee thereof) shall violate the Act, or any of the covenants, restrictions or provisions of this Declaration or any of the Rules and Regulations, including, without limitation, the failure to pay sums due from the Unit Owner under this Declaration, and if such default or violation shall continue for ten (10) days after notice to the Unit Owner in writing from the Board, or shall occur repeatedly during any ten (10) day period after such written notice or request to cure such violation from the Board, then the Board shall have the power to issue to said defaulting Unit Owner a notice in writing terminating the rights of the said defaulting Unit 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 Association, acting through the Board, against said defaulting Unit Owner for a decree of mandatory injunction against such defaulting Unit Owner or Occupant, or in the alternative, for a decree declaring the termination of said defaulting Unit Owner's right to occupy, use or control the Unit owned by him on account of said violation, and ordering that all right, title and interest of said defaulting Unit 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 Unit Owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of proceeding and sale, and all such items shall be taxed against said defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments or liens hereunder, 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 its appurtenant interest 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.

19. **AMENDMENT.** Subject to the other terms hereof, the provisions of this Declaration may only be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission, approved and signed by not less than one hundred percent (100%) of the Unit Owners (each Unit shall be entitled to only one vote) and acknowledged; provided, however, that all lien holders of Record shall have been notified by certified mail of such change, modification or rescission and an affidavit by the secretary of the Association certifying to such mailing shall be made a part of such instrument. Notwithstanding the above, no amendment shall modify any provision of Paragraph 17(a) of the Declaration or in any other way limit a Unit Owner's ability to rent or lease their Unit for a term of less than thirty (30) days without the written consent of one hundred percent (100%) of the Unit Owners.

Notwithstanding the foregoing, if the Act, this Declaration or the Bylaws require the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all Unit Owners or all lien holders or both as required by the Act or this Declaration.

The change, modification or rescission, shall be effective upon the Recording of such instrument; provided, however, that no provisions in the Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act.

20. **NOTICES.** Notices provided for in the Act, this Declaration or the Bylaws shall be in writing, and shall be addressed to the Association, the Board or any Unit Owner, as the case may be. The Association or Board may designate a different address or addresses for notices by written notice of such change of address to all Unit Owners. Any notices provided to a Unit Owner shall be delivered to the address assigned to the Unit; provided, any Unit Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by the United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof. Upon written request to the Board, the holder of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration to be given to the Unit Owner or Owners whose Unit is subject to such mortgage or trust deed.

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

22. **RIGHTS AND OBLIGATIONS.** Each grantee of Developer and such Grantee's

heirs, successors and assigns, by the acceptance of a deed of conveyance with respect to any part of the Property, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges of, 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 that are more than administrative in nature such as, but not limited to, reservations in favor of and future rights of Developer, are hereby incorporated into and made a part of this Declaration by reference. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in the Property, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every such deed of conveyance or contract for conveyance.

All present and future Unit Owners, tenants and occupants of a Unit shall be subject to, and shall comply with, the provisions of the Bylaws, as they may be amended from time to time. The acceptance of a deed of conveyance, devise of or lease to a Unit, or the entering into occupancy of any Unit, shall constitute an agreement that the provisions of the Bylaws and any Rules and Regulations promulgated thereunder, as 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.

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

24. **CONDEMNATION**. In the event of a taking in condemnation or by eminent domain of a part of the Common Elements, the award made for such taking shall be payable to the Board for and on behalf of the Association. If a majority of the Board in its sole and absolute discretion approve the repair and restoration of such Common Elements, the Board shall arrange for the repair and restoration of such Common Elements, the Board shall disburse the proceeds of such award to the contractor(s) engaged in such repair and restoration in appropriate progress payments. In the event that the Board does not approve the repair and commence restoration of such Common Elements within one hundred twenty (120) days after taking by the public or private authority, the Board shall disburse the net proceeds of such award on the basis of the Ownership Percentage of each Unit Owner.

25. **DEVELOPER'S RIGHTS RESERVED**. The Developer reserves the following

rights in the Property:

(a) The right to establish, relocate, expand, modify, reduce, enlarge or extend existing driveways, parking areas and yard and to establish, construct, relocate, expand, modify, reduce, enlarge or extend sewers, utility lines or service connections in order to serve any building on the Property; and

(b) The right to amend the Plat and this Declaration in order to add, delete or alter the boundaries between Units and thereby alter the Ownership Percentage allocated to such Units; and

(c) The right to reassign Common Elements as Limited Common Elements to serve a single Unit or one or more adjoining Units as an inseparable appurtenance thereto; and

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

(e) The right to appoint and remove all officers and directors of the Board until the expiration of the Developer Control Period; and

(f) The right during the Developer Control Period to amend this Declaration to comply with the requirements of the Act, the Federal National Mortgage Association, the Federal Housing Authority, the Federal Home Loan Mortgage Corporation, the Veteran's Administration or other mortgage lending programs that can afford financing for the purchase of Units.

26. **ASSOCIATION'S RIGHTS RESERVED.** The Unit Owners' rights of enjoyment in the Common Elements shall be subject to:

(a) The right of the Association, as provided in its Bylaws, to suspend the enjoyment rights of any member in utilities, ingress and egress, and all other rights in the Common Elements for any period during which any Assessment remains unpaid, and for such period as it considers appropriate for any infraction to the Rules and Regulations; and

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

(c) The right of the Association to diminish in any way or to dedicate or transfer all or any part of the Common Elements to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the members entitled to vote thereon, provided that no such diminution or dedication or transfer, nor any determination as to the purposes or conditions thereof, shall be effective unless Developer (or its successors or assigns) and at least eighty percent (80%) of the total votes of the Association entitled to vote thereon have approved such dedication, transfer, purpose or condition; providing, however, that such consent shall not be required for the dedication of utility or service easements; and

(d) The right of the Association, by a decision of the Board, to grant such licenses, permits, easements and rights-of-way to such utility companies or public

agencies or authorities as it shall deem necessary for the proper servicing, maintenance and operation of the Common Elements and the individual Units.

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

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

29. **EXHIBITS**. Developer hereby acknowledges and agrees that all schedules, addendum and exhibits referenced in this Declaration are attached hereto and incorporated herein.

[Signatures appear on the following page]

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed this 30th day of October, 2020.

RISE DEVELOPMENT, LLC,

Rick Wells
Signature

Manager
Title

STATE OF Arizona

COUNTY OF Maricopa

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, Rick Wells, to me known (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged themselves to be an officer of RISE DEVELOPMENT, LLC, the within named bargainer, a limited liability company, and that they, as such, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

Witness my hand and official seal, this the 30th day of October, 2020.

Vicki A Fischer
Notary Public

My Commission Expires: Sept 30, 2022

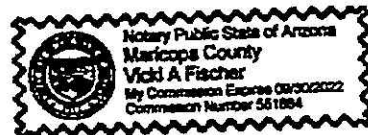


EXHIBIT A
LEGAL DESCRIPTION OF THE REAL PROPERTY

Land in Davidson County, Tennessee, being part of Lot No. 26, of Richardson's Addition to East Nashville, as of record in Plat Book 161, page 5, Registers Office for Davidson County, Tennessee and parts of Lots No. 37, 38 and 39 on the Plan of Oakwood Park, as of record in Plat Book 421, page 12, Register's Office for Davidson County, Tennessee described according to a survey by Barge, Waggoner & Sumner, dated July 14, 1967, as follows:

Beginning at a point in the westerly margin of North 5th Street, the southeast corner of Lot No. 39; thence with the southerly line of said lot North 81° 24' West 166.22 feet to a point in the east margin of a 16 foot alley, thence with the margin of same, North 9° 25' East 1.49 feet to a point in the southeasterly margin of Mile End Avenue as relocated; thence with said margin of said Avenue, northeastwardly 76.43 feet to a point; thence continuing with same, North 55° 33' East 52.52 feet to a point at the beginning of a slight curve to the right with a radius of 32.50 feet, eastwardly 24.62 feet to a point; thence South 81° 03' East 27.20 feet to a point at the beginning of a curve to the right, having a radius of 17.50 feet; thence around said curve southeastwardly 27.51 feet to a point in the westerly margin of North 5th Street thence with the margin of same, South 9° 01' West 73 .57 feet to the point of beginning.

Being the same property conveyed to Rise Development, LLC, a Colorado limited liability company, by warranty deed from ITH, L.P., a Tennessee limited partnership, of record as Instrument No. 20200205-0013499, Register's Office for Davidson County, Tennessee.