This Instrument Prepared By:
MANIER, WHITE, HEROD, HOLLABAUGH & SMITH, P.C.
Sam H. Poteet, Jr.
700 Metropolitan Federal Building
230 Fourth Avenue, North
Nashville, Tennessee 37219

BOOK 6725 PAGE 885

MASTER DEED

FOR

KIMBERLY COURT

THIS MASTER DEED made and entered into by Kimberly, Limited, a Tennessee Limited Partnership, having its principal office and place of business in Goodlettsville, Davidson County, Tennessee (hereinafter referred to as "Developer");

W I T N E S S E T H:

WHEREAS, Developer is the legal title holder of certain real property located in Davidson County, Tennessee and more particularly described on Exhibit A hereto (the "Property"); and

WHEREAS, Developer desires to submit the Property described on Exhibit A, together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anywise pertaining thereto to the provisions of the Horizontal Property Act of the State of Tennessee as the same may be amended from time to time; and

WHEREAS, Developer further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Property or any part thereof, certain rights, easements and privileges in, over and upon the said Premises and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof, for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

58068

IDENTIFICATION REFERENCE

DEC 4 10 59 AM '85

FELIX Z. WILLETTE REGISTER
DAVIDSON COUNTY, TN

NOW, THEREFORE, Developer declares as follows:

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

(a) "Act" means the "Horizontal Property Act" of the State of Tennessee as the same may be amended from time to time.

(b) "Association" means Kimberly Court Condominium Association, a Tennessee not-for-profit corporation.

(c) "Board" means the Board of Directors of Kimberly Court Condominium Association.

(d) "Buildings" means the buildings located on the parcel and forming a part of the Property and containing the Units. The "Buildings" are delineated on the Plat.

(e) "By-Laws" means the By-Laws of the Kimberly Court Condominium Association, attached hereto as Exhibit B and made a part hereof, as amended from time to time. For purposes of the Act, all provisions contained in the body of this Master Deed dealing with the administration and maintenance of the Property shall be deemed to be part of the By-Laws.

(f) "Common Elements" mean all of the Property except for the Units, and, without limiting the generality of the foregoing, shall include those items defined as "General Common Elements" in the Act, including the following:

(1) The Parcel;

(2) All foundations, party walls, bearing walls and columns, roofs, halls, lobbies, stairways, and entrances and exists or communication ways;

(3) All compartments or installations of certain services such as power, light, gas, cold

and hot water, refrigeration, reservoirs, water tanks and pumps, and the like;

(4) All garbage dumpsters and, in general, all devices or installations existing for common use;

(5) All parking areas, roads, sewers and all other services of a public nature not inside the walls of the individual units;

(6) Pipes, ducts, electrical wiring and conduits (except pipes, ducts, electrical wiring and conduits situated entirely within a Unit and serving only such Unit; and

(7) All other elements of the Buildings desirable or rationally of common use or necessary to the existence, upkeep and safety of the condominium regime established by this Master Deed.

(g) "Developer" means Kimberly, Limited, a Tennessee Limited Partnership, its successors and assigns, provided such successors and assigns are designated in writing by Developer as a successor or assign of the rights of Developer set forth herein.

(h) "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 or use of which is reserved to the lawful occupants of such Unit or Units either in this Master Deed, on the Plat, or by the Board. Limited Common Elements shall include, but shall not be limited to, the separate furnace, air conditioner and water heater located within or adjacent to a Unit and serving only such Unit, pipes, ducts, electrical wiring and conduits located entirely within a Unit or adjoining Units and serving only such Unit or Units, any balconies and patios, and such portions of the perimeter walls,

floors and ceilings, doors, vestibules, windows, screens and entryways, and all associated fixtures and structures therein as lie outside the Unit boundaries.

(i) "Majority" or "majority of the Unit Owners" means the owners of more than fifty (50%) percent of the Units.

(j) "Master Deed" means this instrument, by which the Property is submitted to the provisions of the Act, as hereinafter provided, and such Master Deed as amended from time to time.

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

(l) "Parcel" means the parcel or tract of real estate, described on Exhibit A attached to this Master Deed and submitted hereby to the provisions of the Act.

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

(n) "Plat" means the plat of survey of the Parcel submitted to the provisions of the Act showing the number of each Unit, expressing its area, location and other data necessary for identification, said Plat being attached hereto as Exhibit D.

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

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

(q) "Rules and Regulations" refer to the rules and regulations concerning the use of the Units and the Common Elements, as adopted from time to time by the Board in accordance with the Master Deed and the By-Laws.

(r) "Unit" means an enclosed space consisting of one or more rooms occupying all or part of a floor or floors in the Buildings, which enclosed space is not owned in common with Unit Owners of other Units. Each Unit is numbered as shown on the Plat. The boundaries of each Unit shall be and are the unfinished interior surfaces of its perimeter walls, floors and ceilings, and a Unit includes both the portion of the Buildings so described and the air space so encompassed, excepting Common Elements. It is intended that the term "Unit" as used in this Master Deed 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 and of the undivided interest in the Common Elements appurtenant thereto, and shall be deemed the same as "Co-Owner" under the Act, but "Unit Owner" shall not mean the mortgagee or beneficiary of a recorded mortgage or deed of trust who holds a lien solely for security purposes and does not have possession of the Unit. Unless specifically provided otherwise herein, Developer shall be deemed a Unit Owner so long as it is the legal title holder of any Unit.

2. Submission of Property to the Act. Developer does hereby submit and subject the Parcel and the Property to the provisions of the Horizontal Property Act of the State of Ten-

nessee as amended from time to time and does hereby establish a horizontal property regime to be known as Kimberly Court Condominiums.

3. Plat. The Plat sets forth the numbers and locations of each Unit and other data as required by the Act.

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

5. (a) Association of Unit Owners and Administration and Operation of the Property. There has been or will be formed an Association having the name "Kimberly Court Condominiums Association," a Tennessee not-for-profit corporation, which Association shall be the governing body for all Unit Owners, and shall be operated to provide for the maintenance, repair, replacement, administration and operation of the Property, as provided in the Act, this Master Deed and the By-Laws. The By-Laws for the Association shall be the By-Laws attached to this Master Deed as Exhibit B and made a part hereof. The Board of the Association shall be elected and serve in accordance with the provisions of the By-Laws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time as the Board deems advisable. 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 Unit Owners, in accordance with the provisions of this Master Deed and the By-Laws. 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. Each Unit shall have one (1) vote.

(b) 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 subparagraph (c) below. The Board may 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 ¶10 hereof.

(c) Initial Management Contract. Prior to the appointment of the First Board as provided herein, Developer, on behalf of the Association, may employ a management corporation to act as Managing Agent for the Property; provided, however, that such contract shall not exceed a period of three (3) years.

(d) Use by Developer. During the period of sale by Developer of any Units, Developer and Developer's agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access, ingress to and egress from the Buildings and Property as may be required for purposes of sale of Units. While Developer owns any of the Units and until each Unit sold by it is occupied by the Purchasers, Developer and its employees may use and show one or more of such unsold or unoccupied Units as a model Unit or Units and may use one or more of such unsold or unoccupied Units as a sales office, and may maintain customary signs in connection therewith.

(e) Nonliability of Directors and Officers. To the extent permitted by law, neither the directors nor officers of the Association shall be personally liable to Unit Owners for any mistake of judgment or for any other acts or omissions of

any nature whatsoever as such directors or officers, except for any acts or omissions found by a court to constitute gross negligence or fraud. Unit Owners shall indemnify and hold harmless each of the directors or officers and their respective heirs, executors, administrators, successors and assigns.

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 this Master Deed or By-Laws, the determination thereof by the Board shall be final and binding on all Unit Owners.

7. Ownership of the Common Elements. Each Unit is hereby allocated an undivided interest in the Common Elements as set forth on Exhibit C attached hereto and made a part hereof as though fully set forth herein. The assigned percentages of interest set forth on Exhibit C shall remain constant unless hereafter changed by recorded amendment to this Master Deed consented to in writing by Unit Owners, in accordance with ¶21 hereof. The ownership of a Unit shall not be conveyed separate from the undivided ownership in the Common Elements appurtenant to such Unit. The undivided interest in the Common Elements appurtenant to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering such Unit may refer only to the fee title to that Unit.

8. Use of the Common Elements. Each Unit Owner shall have the right to use the Common Elements (except the Limited Common Elements and portions of the Property subject to leases made by or assigned to the Board) 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 not only to each Unit Owner, but also to his agent, servants, tenants, family members, customers, invitees and licensees. However, each Unit Owner shall have the

right to the exclusive use and possession of the Limited Common Elements contiguous to and serving such Unit alone or with adjoining Units. Such rights to use Common Elements, including the Limited Common Elements, shall be subject to and governed by the provisions of the Act, Master Deed, By-Laws and Rules and Regulations of the Association. In addition, the Association shall have the authority to lease, grant concessions or grant easements with respect to parts of the Common Elements, subject to the provisions of this Master Deed and the By-Laws. 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 and regulations as the Board may adopt or prescribe.

9. Parking Space. Parking spaces on the Property shall be part of the Common Elements, and may be allocated and reallocated, from time to time, to the respective Unit Owners, and shall be used by such Unit Owners subject to the Rules and Regulations of the Association. Each Unit shall be assigned two spaces for exclusive use.

10. (a) Common Expenses. Each Unit Owner shall pay his proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance with this Master Deed and the By-Laws (which expenses are herein sometimes referred to as "common expenses"), including, but not limited to, the maintenance and repair of the Property and any and all replacements and additions thereto. Except for its responsibilities as a Unit Owner, as provided herein, Developer shall be responsible to complete Units and Common Area as it has done on Units and Common Area where it has received a Use and Occupancy Permit. Developer shall not have any responsibility for the maintenance, repair or replacement of any part of the Common Elements after it has received the Use and Occupancy Permit. Developer will pay dues and keep insurance on Units until such Units are sold and closed. Each Unit Owner shall be responsible for paying common

expenses in the same proportion as his percentage of ownership in the Common Elements. Assessments for the payment of common expenses shall be in such amounts and shall be payable at such times as determined in the manner provided in the By-Laws. No Unit Owner shall be exempt from payment of his proportionate share of the common expenses by waiver or nonuse of enjoyment of the Common or Limited Common Elements or by abandonment of his Unit. If any Unit Owner shall fail to make such payment of assessments for common expenses when due, the amount thereof, together with any reasonable late charge established by the Board, and together with interest at the rate of fifteen (15%) percent per annum, after said assessments become due and payable shall constitute a continuing lien on the Unit against which the assessment is made, as provided in the Act. Each Unit Owner shall be personally liable for his portion of each assessment made while he is the owner of a Unit, and his grantee shall be jointly and severally liable for any assessments due and payable at the time of conveyance.

(b) Mortgage and Deed of Trust Protection. 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. This subparagraph (b) shall not be amended, changed, modified or rescinded without the prior written consent of all mortgagees and beneficiaries of record.

11. Mortgages. Each Unit Owner shall have the right, subject to the provisions herein, to mortgage his Unit together with his respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to mortgage or place a lien on the Property or any part thereof, except to the

extent of his own Unit and its appurtenant interest in the Common Elements.

12. 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, as provided in the Act. In the event that such taxes for any year are not separately taxed to each Unit Owner, but rather are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements, and, in said event, such taxes shall be a common expense.

13. Insurance. The Board shall obtain insurance for the Property, exclusive of the additions within, improvements to and decorating of the Units or Limited Common Elements by Unit Owners, 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 the Units, and against such other hazards and for such amounts as the Board may deem advisable. Insurable replacement cost shall be deemed the cost of restoring the Common Elements, Units, 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 Owners in proportion to the Unit Owners' respective percentages of ownership in the Common Elements, as set forth in this Master Deed, 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, at the option of the Board, and upon written notice to all Unit Owners, premiums for such insurance shall be separately billed to Unit Owners based upon their respective percentages of ownership in the Common Elements.

In the event of damage to or destruction of any Buildings or Common Elements as a result of fire or other casualty covered by insurance proceeds (unless more than two-thirds 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 all Units, Buildings and Common Elements substantially in accordance with the original plans and specifications 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 a proportion thereof based upon his percentage of ownership in the Common Elements. If more than two-thirds of all Buildings require reconstruction, unless otherwise unanimously agreed upon by the Unit Owners, the insurance indemnity shall be delivered pro rata to the Unit Owners entitled to it in accordance with the applicable provisions of the By-Laws or in accordance with a decision of three-fourths of the Unit Owners if no By-Law provisions are applicable. The Board shall not be responsible for the repair, replacement or restoration of any wall, ceiling or floor decorations or covering or any other part of a Unit for which the responsibility of 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 unless insurance therefor is specifically provided for in the insurance policy obtained by the Board.

The Board shall also obtain comprehensive public liability insurance, in such amounts as it deems desirable, and workers' 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, Developer and the Managing Agent, if any, from liability in connection with the Property. The premiums for such insurance shall be a common expense. However, at the option of the Board, and upon written notice to all Unit Owners,

premiums for such insurance shall be separately billed to each Unit Owner with each Unit Owner to bear a proportion thereof based upon his percentage of ownership in the Common Elements. The Board shall retain in safekeeping any such public liability policy for six (6) years after the expiration date of the policy.

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 (150%) percent 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 shall 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. The Board shall require such fidelity bond coverage as necessary for any person or Board member handling Association funds. The premiums for such insurance and bonds shall be a common expense.

Each Unit Owner shall be responsible for obtaining his own insurance on the contents of his Unit and the Limited Common Elements serving his Unit as well as his 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. In addition, in the event a Unit Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that his liability, loss or

damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Board for all of the Unit Owners as part of the common expenses, as above provided, said Unit Owner may, at his option and expense, obtain additional insurance.

14. 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 his Unit. Except to the extent hereinafter set forth, maintenance of, repairs to and replacements within the 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 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 and electrical wiring serving only such Unit shall be borne by the owner of the Unit to which such Limited Common Elements are appurtenant; and, at the discretion of the Board, maintenance of, repairs to and replacements within the other Limited Common Elements may be assessed in whole or in part to Unit Owners benefited thereby. Further, at the discretion of the Board, the Board may direct Unit Owners who stand to be benefited by such maintenance of, repairs to and replacements 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 contractors' and subcontractors' sworn statements as may be required to protect the Property from all mechanics' or materialmen's lien claims that may arise therefrom; provided, however, that if, in order to maintain, repair or replace the electrical wiring, plumbing or other utilities of a Unit, it shall be the responsibility of the Association to provide such maintenance, repair or replacement, but the

cost of such maintenance, repair or replacement may be assessed to the Unit Owners benefited thereby, as hereinabove provided.

If, due to the act or neglect of a Unit Owner or his agent, employee, tenant, family member, invitee or licensee, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements are required which would otherwise be a common expense, then such Unit Owner shall pay for such damage or such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by the Association's insurance.

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

15. Alterations, Additions or Improvements. Except as provided in ¶16 herein, 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 and charge as common expenses alterations, additions and improvements of the Common Elements as provided in the By-Laws. 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 or improvements.

16. Decorating. Each Unit Owner, at his own expense, shall furnish and be responsible for all decorating within his

Unit and Limited Common Elements serving his Unit, as may be required from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting and other furnishings and decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his Unit, and such Unit Owner shall maintain said interior surfaces in good condition at his sole expense, as may be required from time to time. Said maintenance and use of interior surfaces shall be subject to the Rules and Regulations of the Association, but each Unit Owner shall have the right to decorate such interior surfaces from time to time as he may see fit and at his sole expense. Decorating of the Common Elements (other than interior surfaces within the Units as above provided and other than of Limited Common Elements) and any redecorating of Units, to the extent such redecorating of Units is made necessary by damage to Units caused by maintenance, repairs or replacement of the Common Elements by the Association, shall be furnished by the Association as part of the common expenses. All windows and screens forming part of a perimeter wall of a Unit shall be cleaned and washed, and any damage thereto repaired, at the expense of the Unit Owner of that Unit.

17. 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 shall actually encroach upon another Unit, as the Common Elements and Units are shown on 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.

18. Use and Occupancy Restrictions. Subject to the provisions of the By-Laws, no part of the Property may be used for purposes other than the related common purposes for which

the Property was designed and as allowed by municipal zoning laws. The Common Elements shall be used only by Unit Owners and their agents, employees, 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. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession or easement, presently in existence or entered into by the Board at some future time, affecting any part or all of said Common Elements.

19. Remedies. In the event of any violation of the provisions of the Act, this Master Deed, the By-Laws or 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 is successors or assigns, shall have each and all of the rights and remedies which may be provided for in the Act, this Master Deed, the By-Laws 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 other 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 paragraph, or for any combination of remedies, or for any other relief. All expenses of the Board in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the 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 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 Owner and upon all of his additions and improvements thereto 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 hereinabove set forth in ¶10(b) hereof. In the event of any such default by any Unit Owner, the Board and the Manager or Managing Agent, if so authorized by the Board, shall have the authority to correct such default, and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board. This paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of 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 Master Deed:

(a) To enter (either peaceably or forceably 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 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 forceably 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 Master Deed, the By-Laws 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 shall occur repeatedly during any ten-day period after such written notice or request to cure such violation form 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 first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against said de-

faulting 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 thereunder 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 Master Deed.

20. Amendment. The provisions of this Master Deed may be amended by an instrument in writing, setting forth such amendment, signed by Unit Owners owning not less than sixty-seven (67%) percent of the Units; provided, however, that all lienholders of record have been notified by certified mail of such amendment, and an affidavit by the Secretary of the Association certifying to such mailing is made a part of such instrument.

However, if the Act, this Master Deed or the By-Laws require the consent or agreement of all Unit Owners or of all lienholders for any action specified in the Act or in this Master Deed, then any instrument amending any provision of this Master Deed with respect to such action shall be signed by all Unit Owners or all lienholders or both as required by the Act or this Master Deed. Any amendment shall be effective upon the recording of such instrument in the Office of the Register of Davidson County, Tennessee; provided, however, that no provisions in this Master Deed may be amended so as to conflict with the provisions of the Act.

21. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Master Deed shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall contin-

ue only until twenty-one (21) years after the death of the survivor of the now living descendants of the Governor of Tennessee, Lamar Alexander.

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

All present and future Unit Owners and Occupants of a Unit shall be subject to, and shall comply with, the provisions of the By-Laws appended hereto and recorded herewith, pursuant to Tennessee Code Annotated, Section 66-27-111, as they may be amended from time to time. The acceptance of a deed of conveyance, devise or lease to a Unit, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the By-Laws, and any Rules and Regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Unit Owner or Occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any 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 Master Deed, By-Laws and Rules and Regulations of the Association may be incorporated by reference in, and become part of, the agreement between any first mortgagee and any present or future Unit Owner who enters into such an agreement with a first mortgagee. When so incorporated, any default in the terms and conditions of this Master Deed, By-Laws and Rules and Regulations may be considered by the first mortgagee as a default, whereupon said first mortgagee, after exercising its option to declare a default, shall then have all of the rights and privileges arising as a result of a default under its agreement with said Unit Owner.

23. Condemnation. In the event of a taking of part of the Common Elements in condemnation or by eminent domain, the award made for such taking shall be payable to the Association. 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, and the Board shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event the Board does not approve the repair and commence restoration of such 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 Common Elements.

24. Rights Reserved. Unit Owner's right of enjoyment in the Common Elements shall be subject to:

(a) The right of the Association, as provided in its By-Laws or Rules and Regulations, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for such period as it considers appropriate for any infraction of its published Rules and Regulations;

(b) The right of the Association to charge reasonable fees for the use of any part or parts of the Common Elements;

(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 or determination as to the purposes or as to the conditions thereof, shall be effective unless members of the Association entitled to cast ninety (90%) percent of the total votes of the Association have agreed to such dedication, transfer, purpose or condition;

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

(e) The right of Developer, within five (5) years after the recordation of this instrument, to add storage bins or garages to the Property in order to serve the existing Buildings. Said improvements may be sold or leased to the Unit Owners in Developer's sole discretion.

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-holding trustee personally for payment of any lien or obligation hereunder created, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of any such lien or obligation shall continue to be a charge or lien upon the Unit and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfer of title to such Unit.

26. Notices. Notices provided for in the Act, the Master Deed or the By-Laws shall be in writing and shall be addressed to the Association or any Unit Owner, as the case may be, at 1799 North Gallatin Road, Madison, Tennessee 37115, or at such other address as hereinafter provided. The Association may designate a different address or addresses for notices to it by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof.

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

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

28. 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 of the intent of any provision hereof.

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

30. Disclaimer. This instrument was prepared by Manier, White, Herod, Hollabaugh & Smith, P.C. The law firm's engagement in this matter was very limited. The firm did not do a title search or meet with the Planning Commission. The firm prepared the Master Deed and Exhibits strictly from information supplied by the Developers and accordingly does not warrant said information. The law firm does not warrant the sufficiency of the description of the Condominium Units contained in the Plat recorded as Exhibit D of the Master Deed. The law firm does not warrant in any way the Master Deed or the attached Exhibits.

IN WITNESS WHEREOF, Developer has executed this Master Deed on the 4TH day of DEC., 1985.

KIMBERLY, LIMITED, A Tennessee Limited Partnership

BY: Charles W. Crook
General Partner

"Developer"

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Before me, the undersigned, a Notary Public within and for the State and County aforesaid, personally appeared Charles W. Crook, 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 Kimberly, Lim-

ited, a Tennessee Limited Partnership, the within named bargainor, and that he, as such Partner, executed the foregoing instrument for the purpose therein contained by signing the name of the Partnership and attesting the same by himself as such Partner.

Witness my hand and official seal, at office in Nashville, Davidson County, Tennessee, this 4th day of December, 1985.

Charlene Battrait
NOTARY PUBLIC

My Commission Expires: 5-7-89

M/D-A120485

EXHIBIT A

LAND in Davidson County, Tennessee, being Lot No. 19 on the Plan of Echo Meadows, of record in Book 2331, Page 64, Register's Office of said County.

LOT No. 19 fronts 170 feet on the west side of Wren Road and runs back 236.5 feet on the north line and 208 feet on the south line, to the east line of the right-of-way of the L & N Railroad and the Meadows property, which is a broken line on which it measures 177.3 feet.

BEING the same property conveyed to grantors by deed of record in Book 5777, Page 247, Register's Office of Davidson County, Tennessee.

EXHIBIT B

BY-LAWS

OF

KIMBERLY COURT

ARTICLE I

Members

(Unit Owners)

Section 1. Eligibility. The members of Kimberly Court Condominium Association, a Tennessee not-for-profit corporation (the "Association"), shall consist of the Unit Owners of the property known as Kimberly Court located at 841 Wren Road, Goodlettsville, 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. Succession. 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 Unit Owners (the "First Meeting") may be held, subject to the terms hereof, on any date, at the option of the Board of Directors of the Association; provided, however, that the First Meeting shall be held not less than ten (10) days, nor more than one hundred twenty (120) days after Kimberly, Limited, a Tennessee Limited Partnership ("Developer"), has sold and delivered deeds for at least seventy-five (75%) percent of the Units. For the purposes of this provision, seventy-five (75%) percent of the Units shall mean Units which correspond, in the aggregate, to seventy-five (75%) percent of the undivided ownership of the

common Elements as set forth in Exhibit C of the Master Deed. Subsequent to the First Meeting, there shall be a regular annual meeting of Unit Owners held each year within fifteen (15) days of the anniversary of the First Meeting. All such meetings of Unit Owners shall be held at such a 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.

Section 4. Special Meetings. Special meetings of Unit Owners may be called by the President or by a majority of the Directors of the Association, or by Unit Owners having at least two-sevenths (2/7's) of the votes entitled to be cast at such meeting. Special meetings shall be called by delivering written notice to all Unit Owners not less than ten (10) days prior to the date of the meeting, stating the date, time and place of the special meeting and the matters to be considered.

Section 5. Voting. Each Unit shall have one (1) vote. 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 Unit Owner consisted of only one (1) person in accordance with the proxy or other designation made by the persons constituting such Unit Owner. In the event of disagreement among such persons and an attempt by two (2) or more of them to cast such vote, such persons shall not be recognized, and such vote shall not be counted. Developer may exercise the voting rights with respect to Units owned by it.

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, or its agent, within fifteen (15) days after the due date thereof. A Unit Owner may protest the amount of the assessment, but it still must be paid during the pendency of his protest to the Board.

Section 7. 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 three (3) members (hereinafter referred to as the "Directors"). The Directors shall be elected at the regular annual meeting of the Association members by the vote of Unit Owners, except that until such time as the First Meeting of members is held, the Directors (hereinafter called "members of the First Board") shall be appointed by Developer. Those candidates for election as a Director receiving the greatest number of votes cast either in person or by proxy at the meeting shall be elected. Every Director, except for members of the First Board, shall hold office for the term of three (3) years and until his successor shall be elected and qualified. One (1) member of the First Board shall hold office until the first regular annual meeting of the Association members, one (1) other member of the First Board shall hold office until the third regular annual meeting of the Association members. Unless otherwise agreed,the one (1) member of the First Board receiving the highest number of votes shall hold office until the third regular annual meeting and the member receiving the next highest number of votes shall hold office until the second regular annual meeting.

Section 2. Qualification. Except for members of the First Board, each Director shall be a Unit Owner or the spouse of a Unit Owner (or, if a Unit Owner is a trustee of a trust, a Director may be a beneficiary of such trust; and if a Unit Owner or such a beneficiary is a corporation or partnership, a Direc-

tor may be an officer, partner or employee of such Unit Owner or beneficiary). 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, except that a vacant position on the Board which was last filed by a member of the First Board may be filled by a person appointed by Developer. 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. Nomination. Nomination for election to the Board shall be made by a Nominating Committee which shall consist of two (2) members appointed by the Board to serve from the close of one (1) annual meeting to the close of the succeeding annual meeting. Such appointment shall be announced at the annual meeting. The Nominating Committee may nominate any number of qualified individuals, but no less than the number of Directors to be elected. The nominations shall be made at least thirty (30) days prior to the annual meeting and a brief statement about the qualifications of each individual so nominated shall be included with the notice of the annual meeting. Nominations shall also be allowed from the members at the annual meeting.

Section 5. Meetings. A regular meeting of the Board shall be held within ten (10) days following the regular annual meeting of the 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 Director's attendance at a meeting shall constitute his waiver of notice of said meeting.

Section 6. Removal. Any Director may be removed from office with or without cause by the vote of a majority of Unit Owners.

Section 7. Compensation. Directors shall receive no compensation for their services as Directors, unless expressly provided for in resolutions duly adopted by the Unit Owners.

Section 8. Quorum. Two (2) Directors shall constitute a quorum.

Section 9. 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;

(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 enter into any lease agreement for lease of premises suitable for use as guest or custodian apartments, upon such terms as the Board may approve;

(l) to borrow money for the purpose of repair or restoration of Common Elements without the approval of the members of the Association;

(m) to secure insurance policies as required by the Master Deed, and in this regard, annually to review the amounts of coverage afforded by such policies;

(n) unless otherwise provided herein or in the Master Deed, 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;

(o) 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 Master Deed";

(p) 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 Master Deed or these By-Laws.

Section 10. Authority of Board to Act for Association. Whenever in these By-Laws the Association is given the power to take any action, it is the intention of these By-Laws that the Board shall act for the Association in all cases, except and to the extent that it is expressly provided that action be taken upon vote of the Unit Owners.

Section 11. Nondelegation. Nothing in these By-Laws shall be considered to grant to the Board, the Association or to the officers of the Association, any powers or duties 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, who shall keep the minutes of all meetings of the Board and of Unit Owners, and who shall, in general, perform all the duties incident to the office of Secretary, and who may be a representative of the Managing Agent;

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

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

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

Section 3. Term of Office. Each officer shall hold office for the term of one (1) year and until is 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 vote of two-thirds (2/3's) 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 cause to be prepared an estimated annual budget for each fiscal year of the Association. 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. To the extent that the assessments and other cash income collected from Unit Owners during the preceding year shall be more or less than the expenditures for such preceding year, the sur-

plus or deficit, as the case may be, shall also be taken into account. The annual budget shall also take into account the estimated net available cash income for the year from the lease, operation or use of the Common Elements. The annual budge shall provide for a reserve for contingencies for the year and replacements, in reasonable amounts as determined by the Board.

Section 2. Assessments. The estimated annual budget for each fiscal year shall be approved by the Board, and copies thereof shall be furnished by the Board to each Unit Owner, not later than thirty (30) days prior to the beginning of such year. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Unit Owner shall pay, as his respective monthly assessment for the common expenses, one-twelfth (1/12) of his proportionate share of the common expenses for such year as shown by the annual budget. The proportionate share for each Unit Owner shall be based upon his respective ownership interest in the Common Elements as set forth in Exhibit C to the Master Deed. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new monthly assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay each month the amount of his respective monthly assessment as last determined. Each Unit Owner shall pay his monthly assessment on or before the first day of each month to the Managing Agent or otherwise as directed by the Board. No Unit Owner shall be relieved of his obligation to pay any assessment by abandoning or not using his Unit, the Common Elements or the Limited Common Elements.

Section 3. Partial Year or Month. For the first fiscal year, the annual budget shall be as approved by the First Board. If such fiscal year, or any succeeding fiscal year, shall be less than a full year, then the monthly assessments for each Unit Owner shall be proportionate to the number of months and days in such period covered by such budget. Commencing with the date of occupancy of his Unit, each Unit Owner shall pay his

assessment for the following month or fraction of a month, which assessment shall be in proportion to his respective ownership interest in the Common Elements and the number of months and days remaining of the period covered by the current annual budget, and which assessment shall be computed by the Board.

Section 4. Annual Report. Within ninety (90) days after the end of each fiscal year covered by annual budget, or as soon thereafter as practicable, the Board shall cause to be furnished to each Unit Owner a statement for such year, showing the receipts and expenditures and such other information as the Board may deem desirable.

Section 5. Supplemental Budget. In the event that, during the course of any year, it shall appear to the Board that the monthly assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated common expenses for the remainder of such year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a supplemental assessment shall be made to each Unit Owner for his proportionate share of such supplemental budget.

Section 6. Expenditures. Except for the Management Agreement described in Article II, Section 9(c) hereof and expenditures and contracts specifically authorized by the Master Deed and the By-Laws, the Board shall not approve any expenditures in an amount in excess of ten (10%) percent of the annual budget for the then current year, unless required for emergency repair, protection or operation of the Common Elements or Limited Common Elements, nor enter into any contract for more than three (3) years, without the prior approval of two-thirds (2/3's) of the total ownership in the Common Elements.

Section 7. Lien. It shall be the duty of every Unit Owner to pay his proportionate share of the common expenses as

provided in the Master Deed, and as assessed in the manner herein provided.

If any Unit Owner shall fail or refuse to make any such payment of assessments 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 rate of fifteen (15%) percent per annum. Such delinquent payment, together with penalty and interest, shall constitute a lien, as provided in the Act, enforceable by the Board, on the interest of such Unit Owner in the property.

The Association, or its successors and assigns, 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 attorneys' 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 common expenses, and such Unit Owner withholds payment thereof after demand by the Association in writing setting forth the amount claimed, the Association shall have the right to possession of such Unit. 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 Master Deed or these By-Laws, or as are otherwise available at law or in equity, for the collection of all unpaid assessments.

Section 8. Records and Statement of Account. The Board shall cause to be kept detailed and accurate records in chronological order of its receipts and expenditures affecting the Common Elements, specifying and itemizing the common expenses incurred. Payment vouchers may be approved in such manner as the Board may determine.

The Board shall, upon receipt of ten (10) days' written notice to the Association and upon payment of a reasonable fee, furnish to any Unit Owner a statement of his account set-

ting forth the amount of any unpaid assessment or other charges due and owing from such Unit Owner.

Section 9. 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 attorneys' fees, incurred by reason of such lien.

Section 10. Holding of Funds. All funds collected hereunder shall be held and expanded for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the percentages set forth on Exhibit C to the Master Deed.

ARTICLE V

Use and Occupancy Restrictions

Section 1. General. No lawful, noxious or offensive activities shall be carried on in any Unit or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board cause unreasonable noise or disturbance to others.

Each Unit Owner shall maintain his Unit in good condition and in good order and repair, at his own expense, and shall not do or allow anything to be done in his Unit which may in-

crease the cost or cause the cancellation of insurance on other Units or on the Common Elements.

KIMBERLY, LIMITED, a Tennessee
Limited Partnership

BY: Charles M. Crisp
Partner

EXHIBIT C

UNIT #	UNIT'S SQUARE FEET	PERCENTAGE OF OWNERSHIP OF COMMON ELEMENTS
1	1400	1/7
2	1400	1/7
3	1400	1/7
4	1400	1/7
5	1400	1/7
6	1400	1/7
7	1400	1/7

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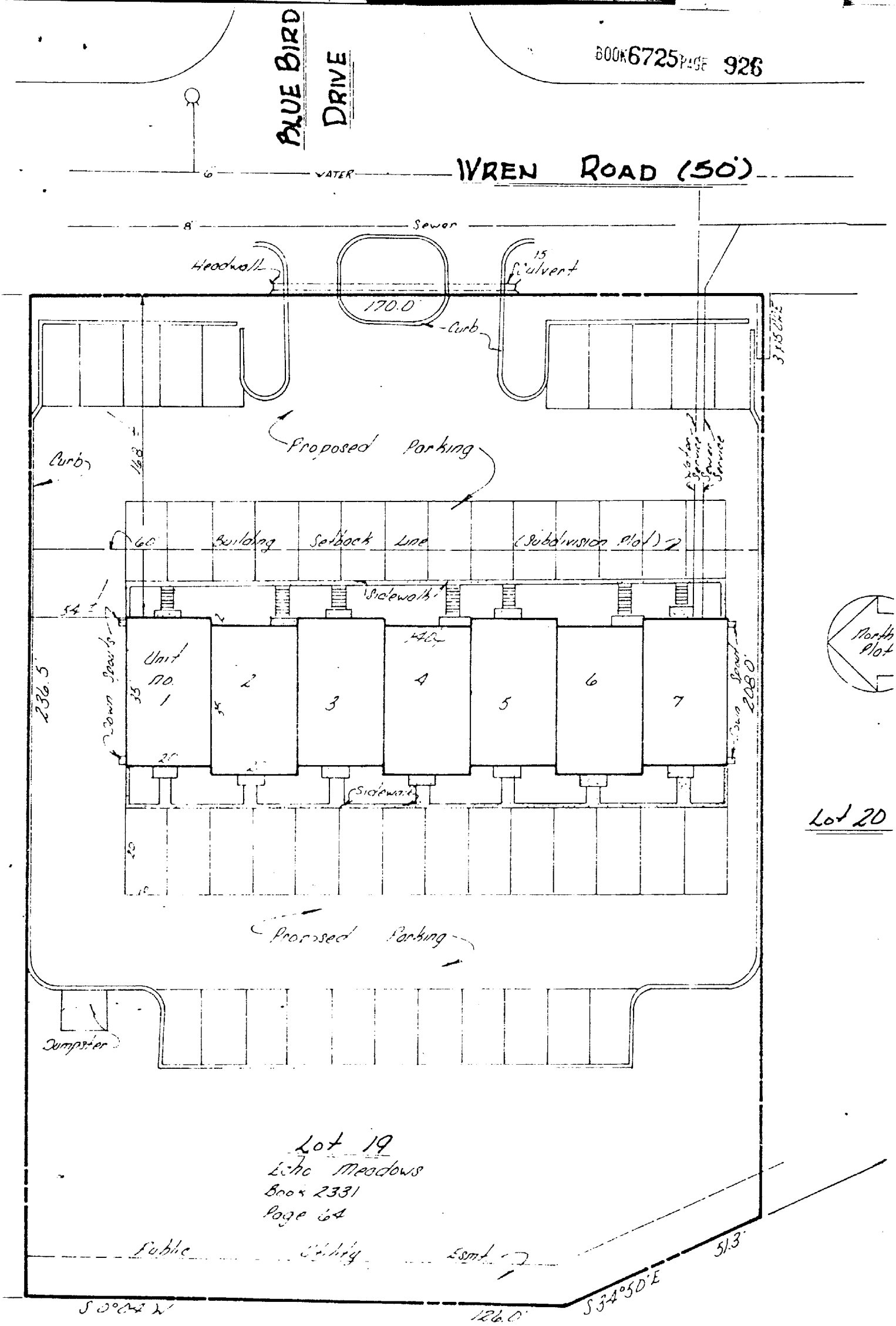


EXHIBIT D