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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR 1935 AND 1937 KIMBARK, A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

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

THIS DECLARATION made and entered into by GRAYBEAR 521 PARTNERS, a Tennessee general partnership (the "**Declarant**").

W I T N E S S E T H:

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

WHEREAS, the Declarant desires to submit the Parcel, together with all buildings, structures, improvements, and other permanent fixtures of whatever kind thereon, and all rights and privileges belonging or in any way pertaining thereto (the "**Project**"), to the provisions of the Tennessee Horizontal Property Act, as the same may be amended from time to time for the express purpose of establishing thereon a Planned Unit Development (as defined herein) to be known as 1935 and 1937 Kimbark, a Horizontal Property Regime with Private Elements; and

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

NOW, THEREFORE, the Declarant declares as follows:

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

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

(b) "**Assessment**" shall mean an assessment by the Association for Common Expenses or other costs allocable to a Unit pursuant to the Act, this Declaration or the By-Laws.

(c) "**Association**" shall mean 1935 AND 1937 KIMBARK HOMEOWNERS ASSOCIATION, INC., a Tennessee nonprofit corporation.

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

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

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

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

(h) "**Common Expenses**" shall mean the expenses of the administration and operation of the Common Elements, including, but not limited to, the maintenance and repair thereof and any and all replacements and additions thereto, together with any other expenses incurred in conformance with this Declaration and the By-Laws.

(i) "**Declarant Control Period**" shall mean any period during which the Declarant holds Class B membership rights.

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

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

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

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

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

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

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

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

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

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

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

(u) "**Paying Owner**" shall mean a Unit Owner that performs maintenance, advances or pays sums, or does any other act reasonably necessary to cure a default by another Unit Owner.

(v) "**Plat**" shall mean the map, plat, survey, site plan or drawing of the Parcel showing the number, area, location and other data necessary for idenitifcation of each Unit, including but not limited to the area of the Private Elements upon which the Unit is located and other data necessary for identification of the Units, Private Elements, said Plat being attached hereto as Exhibit B.

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

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

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

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

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

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

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

(dd) "**Unit**" shall mean a portion of the Project as shown and designated on the Plat for separate ownership and shall include the Private Elements, the residence located thereon and all additions and improvements thereto, including without limitation, all interior and exterior aspects of the improvements, foundations, load bearing walls and columns, beams, supports, roofs, entrances and exits, communication ways, walls and HVAC equipment. The Units are identified by a number or alphabetic letter (or combination thereof) on the Plat and may be held and conveyed by reference to such number or letter. Conveyance of a Unit shall automatically convey the membership of the Unit Owner in the Association, together with the exclusive right to use the Limited Common Elements appurtenant to such Unit and a non-exclusive right to use any General Common Elements. Any Unit may be jointly or commonly owned in any estate recognized under applicable law. The term "Unit" as used herein shall have the same meaning as the term "apartment" in the Act.

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

2. **Submission of Project to the Act**. The Declarant does hereby submit and subject the Parcel and the Project to the provisions of the Act and does hereby establish a Planned Unit Development to be known as 1935 and 1937 Kimbark, a Horizontal Property Regime with Private Elements.

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

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

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

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

(b) The Unit Owners shall be the members of the Association, with each Unit Owner holding a membership interest therein appurtenant to such Unit, subject to the provisions concerning voting hereinafter set forth. A Unit Owner's membership shall automatically terminate when such Owner ceases to be a Unit Owner. Upon the conveyance or transfer of the ownership interest in a Unit to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association.

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

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

(e) The voting rights in the Association shall be as follows:

i. Class A members shall be all Unit Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Unit owned. When more than one party holds any interest in any Unit, all such parties shall be members. The vote for such Unit shall be exercised as the owners of such Unit shall jointly determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

ii. The Class B member shall be the Declarant, who shall be entitled to three (3) votes for each Unit owned. The Class B membership as to a Unit shall automatically convert to Class A membership at the time the Unit is sold at a Residential Sale.

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

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

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

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

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

(c) Subject to the By-Laws and the Rules and Regulations, each Unit Owner shall have the right to use the General Common Elements in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the General Common Elements shall extend not only to each Unit Owner, but also to the agents, servants, tenants, family members, customers, invitees, and licenses of such Unit Owner. Each Unit Owner's right of enjoyment in the General Common Elements shall be subject to:

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

ii. The right of the Association to diminish in any way or to dedicate or transfer all or any part of the General Common Elements to any public

agency or authority for such purposes and subject to such conditions as may be agreed to by a Majority of the Unit Owners.

iii. The right of the Association to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it shall deem necessary for the proper servicing and maintenance of the Project.

8. **Common Expenses.**

(a) Except as specifically provided otherwise herein, each Unit Owner shall pay an equal share of Common Expenses. Assessments for Common Expenses shall be in such amounts and at such times as determined in the manner provided in the By-Laws. No Unit Owner shall be exempt from payment of Assessments for Common Expenses by waiver or non-use of enjoyment of the Common Elements, or by abandonment of such Owner's Unit.

(b) The Declarant shall not be required to advance from its own funds any sums of money for maintenance, improvements, or any other Common Expenses. No Unit owned by the Declarant shall be assessed for Common Expenses until such time as construction of such Unit is completed.

9. **Special Assessments**. In addition to the annual Assessments for Common Expenses authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Elements, including fixtures related thereto.

10. **Separate Real Estate Taxes.** Real estate taxes shall be separately taxed to each Unit Owner for such Owner's Unit, its Private Elements and the Owner's corresponding membership interest in the Association, as provided in the Act. In the event that such taxes for any year are not separately taxed to each Unit, but rather are taxed on the Project as a whole, then such taxes shall be deemed a Common Expense.

11. **Insurance.**

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

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

Common Elements to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association, as the trustee for the Unit Owners. The policy of property insurance should also contain, if possible, a waiver of subrogation rights by the insurer against the Unit Owners.

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

(d) The Association shall have authority to and may obtain such other insurance insuring the Project or insuring Directors, officers of the Association, and members of any committee appointed pursuant to the By-Laws from liability arising from the fact that said person is or was Director or officer of the Association, or a member of such a committee. Such insurance shall be in such amounts, from such sources and in such forms as the Board may determine,

(e) Premiums for all insurance carried by the Association shall be deemed Common Expenses, except that the premiums for any property insurance relating to Limited Common Elements shall by billed in equal shares only to the Owners of the Units to which such Limited Common Elements are appurtenant.

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

12. **Certificate of Payment**. The Board shall, upon request, furnish to any person a certificate, signed by an officer of the Association, setting forth (a) whether or not all Assessments and any other charges with respect to a Unit have been paid; (b) the amount of the last Assessment; and (c) the amount of any sums that are past due. Such certificate shall be conclusive evidence (x) of the payment any amounts therein stated to have been

paid; and (y) except as set forth in the certificate, no other amounts are then due and payable.

13. **Damage and Reconstruction**.

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

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

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

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

(a) Each Unit Owner, at the Owner's expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within and to (i) the Unit (including all Private Elements); and (ii) the Limited Common Elements appurtenant to the Unit in such condition repair, confirmation and layout as at the date of original construction.

(b) The Association shall be responsible for all maintenance of, repairs to and replacements within and to the General Common Elements.

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

necessitated the other work shall pay for such damage, maintenance, repairs and/or replacements to the other Unit and the Common Elements, as applicable.

15. **Easements and Encroachments.**

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

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

ii. Any portions of the Common Elements that may encroach upon any Unit, or any Unit that may encroach upon any portion of the Common Elements or another Unit, so long as the encroachment continues. Said easement shall also exist for the maintenance, repair and replacement or said encroachments.

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

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

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

vi. Drainage for the Project, as initially constructed.

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

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

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

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

(a) No part of the Project may be used for purposes other than private, single family housing and the related common purposes for which the Project was designed and as allowed by zoning laws. However, the foregoing restrictions as to residence shall not be construed in such manner as to prohibit a Unit Owner or Occupant from: (i) maintaining a personal professional library; (ii) keeping personal

business or profession records or accounts at the Unit; (iii) handling personal business or professional telephone calls or correspondence from the Unit; or (iv) if the Unit Owner of Occupant is a professional or quasi-professional, using a Unit (not in violation of municipal zoning laws) as an ancillary or secondary facility to a professional or quasi-professional office established elsewhere. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions.

(b) No Unit may be offered by a Unit Owner to the public at large for temporary transient accommodations; however, nothing in this Section shall prohibit a Unit Owner from leasing the Owner's Unit to others for use as a residence. Any permitted lease must be in writing, and shall be subject to this Declaration, the By-Laws and the Rules and Regulations. A copy of any lease shall be supplied to the Association upon request by the Board.

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

17. **Enforcement**.

(a) In the event of any violation of the provisions of the Act, this Declaration, the By-Laws, or the Rules and Regulations by a Unit Owner, the Association shall have all of the rights and remedies that may be provided for in the Act, this Declaration, the By-Laws, the Rules and Regulations, or that may be available at law or in equity. Any violation by an Occupant of a Unit shall be deemed to be a violation by the Unit Owner for all purposes hereunder. Said remedies shall include but are not limited to an action or other proceeding against such defaulting Unit Owner, the Occupant and/or others for the appointment of a receiver for the Unit and ownership interest of such Unit Owner, for damages, for injunction or specific performance, for judgment for payment of money and collection thereof, for the right to take possession of the Unit and to sell the same as provided hereinafter in this Section, for any combination of remedies, or for any other relief.

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

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

ii. Fails to pay any Assessment when due; or

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

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

(c) The Association or any Paying Owner shall be entitled to enforce any lien set forth herein lien by filing suit in a court of competent jurisdiction and obtain an order that all the right, title and interest in the Defaulting Owner's Property shall be sold (subject to the lien of any existing and Recorded deed of trust) at a judicial sale upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the said defaulting Unit Owner from reacquiring such Owner's interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorney's fees, and all other expenses of the proceeding and sale, and all such items shall be assessed to the defaulting Unit Owner in said decree. Thereafter, any balance of proceeds shall be applied to any unpaid Assessments and other sums due hereunder, and any remaining amounts, shall be paid to the holder of the first lien on the Unit, or any other party entitled thereto. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Unit and the Unit Owner's corresponding rights with respect to the balance of the Defaulting Owner's Property, and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession. The purchaser shall take the interest in the Defaulting Owner's Property subject to the Act, this Declaration, the By-Laws and the Rules and Regulations.

(d) All sums due hereunder shall also be the personal obligation of the Unit Owner. A successor in title to a Unit shall not be personally obligated to pay any unpaid amounts that have been levied against a Unit unless such successor in title expressly assumes the payment of the same, provided, however, any lien encumbering a Unit as above described shall not be terminated by the transfer of such Unit to the successor. The lien set forth herein shall be subordinate to the lien of any Recorded deed of trust on the interest of such Unit Owner at the time such amounts were due and payable. The holder of any deed of trust that takes possession of the Unit encumbered thereby, forecloses on its deed of trust. or accepts a deed-in-lieu of foreclosure for such Unit (i) shall not be liable for more

than the most recent six (6) months of past due Assessments (which shall remain a lien on such Unit notwithstanding such foreclosure; and (ii)shall be liable for all Assessments and other sums that first become due and payable with respect to the Unit after the holder takes title thereto. This subsection shall not be amended, changed, modified or rescinded without the prior written consent of all deed of trust beneficiaries of Record.

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

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

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

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

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

19. **Amendments**.

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

(60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

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

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

(d) Notwithstanding the above, the Declarant shall have the right to make and Record any necessary amendment to this Declaration for the express purpose of completion of development or correction of clerical errors, or as may be required to obtain any approval of any Federal Entity required for the Planned Unit Development created herein.

20. **Rights and Obligations.**

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

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

21. **Condemnation.**

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

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

(c) If the taking applies to General Common Elements, a majority of the Board in their sole and absolute discretion approve the repair and restoration of such General Common Elements, the Board shall arrange for the repair and restoration of such General Common Elements, and the Board shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event the Board does not approve the repair and commence restoration of such General Common Elements within one hundred twenty (120) days after taking by the public or private authority, the Board shall disburse the net proceeds of such award to the Unit Owners in equal shares.

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

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

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

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

(b) Unless all of the first mortgagees (based upon one (1) vote for each mortgage owned) or Owners (other than the Declarant) of Units have given their prior written approval, the Association shall not be entitled to:

i. Change the percentage interests of ownership of all or any Unit or Unit Owners, except that the percentage ownership of the Association may be reduced due to the addition of a phase or phases to the Planned Unit Development, if contemplated herein.

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

iii. By act or omission seek to abandon the Planned Unit Development.

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

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

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

vii. An adequate reserve fund for the maintenance, repair and replacement of the Common Elements that may be replaced on a periodic basis may be established and funded as necessary upon agreement of all Unit Owners by regular monthly payments rather than by special assessments.

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

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

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

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

xii. Upon written request, the Association shall give to any mortgagee of a Unit, any Federal Entity or any lending institution servicing such mortgages as are acquired by a Federal Entity, or any insuror or guarantor of a mortgage or deed of trust on a Unit, timely notice in writing of any loss to or the taking of Common Elements if such loss or taking exceeds Ten Thousand ($10,000.00) Dollars, or of any other condemnation or casualty loss that affects either a material portion of the Project or the Unit subject to the mortgage or deed of trust, a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, or any proposed action that requires the consent of a specified

percentage of mortgagees. The Association may rely upon the information contained in the book entitled "Mortgage of Units" as must be established pursuant to the By-Laws, for a list of mortgagees to be notified hereby.

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

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

xv. A first mortgagee of a Unit, upon written request, is entitled to written notification from the Association of any default in the performance by the Unit Owner of any obligation under this Declaration or the By-Laws that is not cured within sixty (60) days.

xvi. The property and liability insurance and any fidelity bond coverage required to be maintained by the Association shall meet the requirements specified in Fannie Mae Lending Guide, Chapter Three, Past 5, Insurance Requirements."

25. **Notices.** Notices provided for in the Act, the Declaration or the By-Laws shall be in writing and shall be addressed to the Association, at the address set forth in its charter or at such other address as hereafter provided by the Association or filed with the Tennessee Secretary of State. The Association may designate a different address or addresses for notices to it by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof. Upon written request to the Board, the holder of any mortgage or trust deed of Record encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose Unit is subject to such mortgage or trust deed.

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

27. **Perpetuities and Restraints on Alienation.** If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, when such provision shall continue only until twenty-one

(21) years after the death of the survivor of the now living descendants of the Governor of Tennessee holding office as of the date of this Declaration.

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 or the intent of any provision hereof.

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

30. **Legal Opinion.** Declarant hereby warrants the legal opinion required under the terms of the T.C.A., Section 66-27-103 has been issued and delivered to Developer.

IN WITNESS WHEREOF, the undersigned has executed this Declaration this the 30th day of October, 2014.

DECLARANT

GRAYBEAR 521 PARTNERS, a Tennessee general partnership

By: The Basswood 22 Trust, a Trust formed under the laws of the State of Tennessee, Managing Partner

By: Kelly Harris, Trustee
Kelly Harris, Trustee

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named Kelly Harris, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who acknowledged that she executed the within instrument for the purposes therein contained as Trustee of The Basswood 22 Trust, as the Managing Partner of Graybear 521 Partners, the within named bargainor..

Witness my hand and seal this 31 day of OCTOBER, 2014.

DELSA J. CARTER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Delsa J. Carter
NOTARY PUBLIC

My commission expires: 12-06-16

The undersigned hereby subordinates the lien of the following instrument to this Declaration:

Deed of Trust, Assignment of Leases and Security Agreement of record as Instrument No. 20141010-0094394, Register's Office for Davidson County, Tennessee.

IN WITNESS WHEREOF, the undersigned has executed this Declaration this the 29th day of October, 2014.

FIRST FARMERS AND MERCHANTS BANK, a Tennessee banking association

By: Berry Brooks

Title : Davidson County President

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named Berry Brooks, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who acknowledged that he executed the within instrument for the purposes therein contained as Lender of First Farmers and Merchants Bank, a Tennessee banking association, the within named bargainor..

Witness my hand and seal this 29 day of October, 2014.

NOTARY PUBLIC

My commission expires: November 21, 2017

KAYLA DEWIRE
STATE OF TENNESSEE NOTARY PUBLIC
MAURY COUNTY, TENN.

EXHIBIT A

LEGAL DESCRIPTION

Land being located in Davidson County, Tennessee, being described as follows:

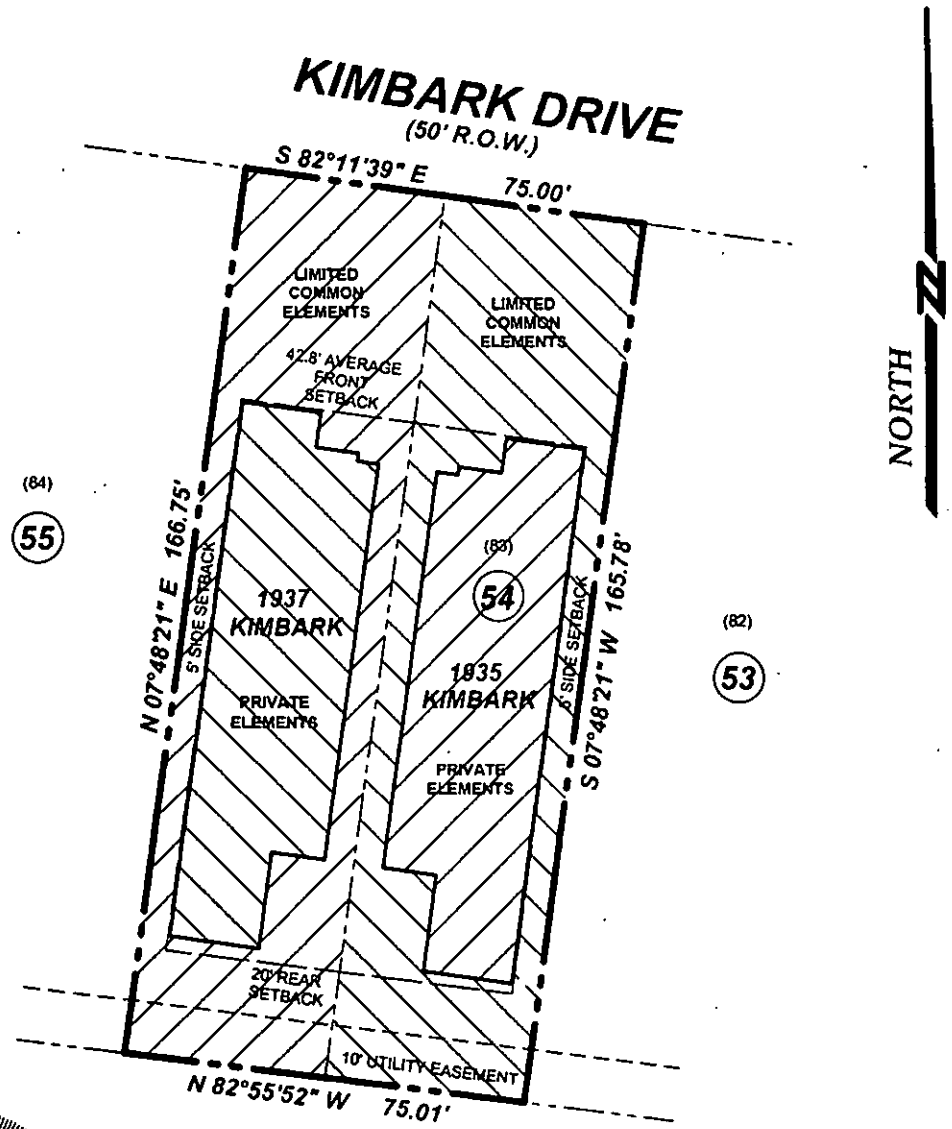
Being Lot 54 on the map of Colonial Heights, of record in Book 1130, page 102, in the Register's Office for Davidson County.

Being the same property conveyed to Declarant by deed from HTC VII PARTNERS of record as Instrument No. 20141010-0094393, said Register's Office.

EXHIBIT B

PLAT

EXHIBIT "B"



BLOCK 1
OVERTON HILLS SUBDIVISION
PLAT BOOK 843 PAGE 66

JASON F. SMITH
REGISTERED LAND SURVEYOR
XVI
AGRICULTURE
COMMERCE
TENNESSEE NO. 1961

SMITH LAND SURVEYING, LLC
9101 MEADOWLAWN DRIVE BRENTWOOD, TN. 37027
TEL:(615)371-2454
SMITHLANDSURVEYING@COMCAST.NET

1935 & 1937 KIMBARK COTTAGES

MAP 131-02 PARCEL 83.00

1935 & 1937 KIMBARK DRIVE
NASHVILLE, TN. 37215

NASHVILLE, DAVIDSON COUNTY
TENNESSEE

DATE: OCT. 22, 2014
SCALE: 1" = 30'

EXHIBIT C

BY-LAWS OF

1935 AND 1937 KIMBARK HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

Members (Unit Owners)

Section 1. **Identity**.

(a) These are the Bylaws of 1935 AND 1937 KIMBARK HOMEOWNERS ASSOCIATION, INC. (the "Association"), a nonprofit corporation incorporated under the laws of the Tennessee Nonprofit Corporation Act, Tennessee Code Annotated (the "Nonprofit Corporation Act").

(b) The Association has been organized for the purpose of serving as the "townhouse corporation" for the planned unit development horizontal property regime with private elements known as 1935 and 1937 Kimbark, a Horizontal Property Regime with Private Elements (the "**Planned Unit Development**"), in accordance with that certain Declaration of Covenants, Conditions and Restrictions for 1937 Kimbark, a Horizontal Property Regime with Private Elements (as the same may be modified, amended or restated, the "**Declaration**"). All capitalized terms not otherwise defined herein shall have the meanings set forth in the Declaration.

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

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

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

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

Section 6. **Voting**.

(a) There shall be Class A Members and Class B Members with voting rights as set forth in the Declaration

(b) No Unit Owner who is in default in the payment of any sums due under the Declaration shall be entitled to exercise the right to vote until such Unit Owner has cured such default. A Unit Owner shall be deemed to be in default if the Owner has not paid any amounts due to the Association or a Paying Owner, as applicable, within ten (10) days after the due date thereof. A Unit Owner may protest to the Board the amount owed, but the amount owed still must be paid during the pendency of the Owner's protest to the Board.

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

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

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

ARTICLE II

Board of Directors

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

(a) The Board shall consist of two (2) Directors.

(b) Directors shall be elected at the annual meeting of the Unit Owners by vote of the Unit Owners as hereinafter provided, except that the Declarant shall appoint interim Directors (the "**Interim Directors**") until the first annual meeting of the Association. At the first annual meeting, each Unit Owner shall appoint one Director. If the Owner of one of the Units refuses to appoint a Director the remaining Unit Owner shall appoint such Director, who need not meet the qualifications under Section 2.

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

Section 2. **Qualification**. Except as provided in Section 1, each Director must be a Unit Owner or the spouse of a Unit Owner. Should any Unit Owner Director transfer title to the Owner's Unit, the respective successor Unit Owner shall assume the transferor's position as Director. If a Director shall otherwise cease to meet such qualifications during the Director's term, the Director shall thereupon cease to be a Director and such Director's place on the Board shall be deemed vacant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. **Power to Take Any Action**. Whenever in these By-Laws the Association is given the power to take any action, it is the intention of these By-Laws that the Board shall act for the Association in all cases, except and to the extent that it is expressly provided that action be taken upon vote of the Unit Owners.

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

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

ARTICLE II

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, financial records, and who shall, in general, perform all the duties incident to the office of Secretary;

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

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

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

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

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

ARTICLE III

Assessments

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

Section 2. **Assessments**. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Unit Owner shall pay, as such Owner's respective monthly Assessment for the Common Expenses and other items for which Assessments are permitted under the Declaration, one-twelfth ($1/12^{th}$) of such Owner's share thereof as shown in the annual budget. In the event the Board fails to approve an estimated annual budget or to determine new monthly assessments for any year, or shall be delayed in so doing, each Unit Owner shall continue to pay each month the amount of such Owner's respective monthly assessment as last determined until a new assessment is established by the Board, at which time the Unit Owner shall be responsible to pay any shortfall needed to pay in full the adjusted monthly assessments established by the Board for such year for the months prior to the date the new annual assessments for such year are established. Each Unit Owner shall pay such Unit Owner' monthly assessment or before the first day of each month to the Board, the Managing Agent, if any, or as may otherwise directed by the Board.

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

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

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

Section 6. **Discharge of Liens**. The Board may cause the Association to discharge any mechanic's lien or other encumbrances that in the opinion of the Board may constitute a lien against the Project or any part thereof other than a particular Unit. When less than all the Unit

Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorney's fees, incurred by reason of such lien.

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

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

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

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

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

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

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

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

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

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

(h) The Declaration and all amendments thereto.

ARTICLE IV

Use and Occupancy Restrictions

Section 1. **General**.

(a) No unlawful, noxious or offensive activities shall be carried on in any Unit or elsewhere on the Project, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board cause unreasonable noise or disturbance to others.

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

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

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

(e) No Unit Owner Unit shall display, hang, store or use any signs or flags outside such Owner's Unit or which may be visible from the outside of such Owner's Unit (except for special events or sports flags for no longer than 48 hours at a time) without the prior written permission of the Board or the written permission of the Managing Agent, acting in accord with the Board's discretion. So long as Declarant owns any Units, the Declarant shall not require Board approval for signage it deems necessary for the marketing of the Project.

(f) No structure of a temporary character, trailer, motor home, boat, tent, shack, garage, barn, or other out-buildings shall be permitted on the Project at any time, temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the Buildings or any portion thereof.

(g) No animals shall be raised, bred, or kept in any Unit, except for dogs, household cats and small birds owned as household pets by a Unit Owner, provided that said pet is not kept for any commercial purpose, and provided that said pet shall be kept in strict accordance with the administrative rules and regulations relating to household pets from time to time adopted or approved by the Board.

(h) All dogs owned by Unit Owners or Occupants and kept in a Unit shall be on leash or within the fenced area of the Limited Common Elements appurtenant to a Unit while outside the Unit. All such dogs shall be exercised by the Unit Owner or Occupant at places on the Project that do not interfere with the use and enjoyment of the same by other Owners.

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

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

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

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

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

Section 2. **Architectural Control**.

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

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

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

(d) Landscaping/grass cutting shall be maintained by the applicable Unit Owner on the Limited Common Elements appurtenant to such Unit and shall be weeded and mulched as necessary in order to maintain appropriate curb appeal for the Project.

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

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

Regulations and any amendments or additions thereto shall be furnished to all Unit Owners upon request.

ARTICLE V

Contractual Powers

Section 1. **Affiliates**. No contract or other transaction between the Association and one (1) or more of its Directors, or between the Association and any corporation, firm or association in which one (1) or more of the Directors of the Association are directors, or are financially interested (an "Affiliate"), is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof that authorizes or approves the contract or transaction with the Affiliate or because the votes of the Directors with an interest in the Affiliate are counted, if the circumstances specified in either of the following subparagraphs exists:

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

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

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

ARTICLE VI

Amendments

These By-Laws may be amended or modified from time to time by action or approval of a majority of the Unit Owners. Such amendments must be Recorded to be effective.

ARTICLE VII

Indemnification

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

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

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

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

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

ARTICLE VIII

Miscellaneous

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

(a) When received;

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

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

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

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

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

ARTICLE IX

Mortgages

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

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

Section 3. **Notice of Default**. The Board, when giving notice to a Unit Owner of a default in paying charges or other default, shall send a copy of such notice to each holder of a mortgage

covering such Unit whose name and address has therefore been furnished to the Board and listed in the Mortgages of Units Book.

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

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

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

ARTICLE X

Conflicts

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