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This Instrument Prepared by:
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DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS FOR 1909 KIMBARK DRIVE COTTAGES

A Horizontal Property Regime with Private Elements

Note: Upon adoption of this Declaration, this Property shall constitute a Planned Unit Development pursuant to the provisions of Tennessee Code Annotated Section 66-27-103(b).

THIS DECLARATION has been made and entered into by MONARCH DEVELOPMENT, LLC, a Tennessee limited liability company, for convenience hereinafter collectively referred to as the "Developer", as of the date set forth above the signatures below.

WITNESSETH:

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

WHEREAS, the Developer intends to and does hereby submit the above-described parcel of real estate together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any way pertaining thereto (the "Property") to the provisions of the Tennessee Horizontal Property Act, Tenn. Code Ann. § 66-27-101 et seq., for the express purpose of establishing thereon a horizontal property regime with private elements to be known as "**1909 Kimbark Drive Cottages**"; and

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

NOW, THEREFORE, the 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, Tenn. Code Ann., Sections 66-27-101, et seq.

(b) "Association" means **1909 Kimbark Drive Cottages Owners Association, Inc.**, a Tennessee not-for-profit corporation.

(c) "Board" means the Board of Directors of the Association.

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

(e) "Bylaws" means the Bylaws 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 this Declaration dealing with the administration and maintenance of the Property shall be deemed to be a part of the Bylaws.

(f) "Common Elements" means all real and personal property within the Property other than the Units (which include the Private Elements within the Units). The Common Elements are all areas included in the Parcel which are not a part of the Private Elements shown on the Plat and shall be held by the Association for the common use and enjoyment of the Unit Owners. The Common Elements shall include, but shall not be limited to lawns, gardens, roadways, parking areas, drainage structures and facilities, fences, sidewalks, signs, lights and utilities. Common Elements are hereby transferred, and shall at all time hereafter be owned by to the Association. "Common Elements" as used herein shall also mean "General Common Elements" as set forth in the Act.

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

(h) "Developer" means **MONARCH DEVELOPMENT, LLC**, a Tennessee limited liability company, its successors and assigns, provided such successors or assigns are designated in writing by Developer as a successor or assign of the rights of Developer set forth herein.

(i) "Limited Common Elements" means any Common Elements contiguous to and serving one particular Unit to the exclusion of the other Unit, as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful Occupants of such Unit either in this Declaration, on the Plat, or by later decision of all of the Unit Owners. The area of the Limited Common Elements for each Unit is as shown on the Plat.

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

(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 Declaration.

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

(n) "Plat" means the map or drawing of the Parcel submitted pursuant to the provisions of the Act showing the designation (by number or letter) of each Unit, expressing its area, location and other data necessary for identification including but not limited to the area of the Private Elements upon which the Unit is located, said Plat being attached hereto as Exhibit B, and to be placed of record as a part of this instrument with the Register's Office for Davidson County, Tennessee.

(o) "Private Elements" means the area upon which each Unit is located and the improvements now or hereafter located thereon. Exclusive ownership in fee simple and use of the Private Elements for each Unit is reserved to such Unit. The area of the Private Elements for each Unit is as shown on the Plat.

(p) "Property" means all the land and space comprising the Parcel, and all improvements and structures thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.

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

(r) "Unit" means a portion of the Property as shown and designated in the Plat for separate ownership and shall include the Private Elements and the residence and improvements now or hereafter located thereon. The Units are identified by Number on the Plat as **Unit 1 and Unit 2** and may be held and conveyed by reference to such number. The street address associated with **Unit 1** shall be **1909-A Kimbark Drive, Nashville, Tennessee 37215**, and the street address associated with **Unit 2** shall be **1909-B Kimbark Drive, Nashville, Tennessee 37215.** Conveyance of a Unit shall automatically convey the undivided membership of each Unit Owner in the Association. Each Unit is numbered as shown on the Plat. Any Unit may be jointly or commonly owned in any estate recognized under applicable law. The term "Unit" as used in this Declaration shall have the same meaning as the term "Apartment" as used in the Act.

(s) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit, and shall be deemed the

same as a "co-owner" under the Act. Unless specifically provided otherwise herein, the Developer shall be deemed a Unit Owner so long as the Developer is the title holder of any Unit.

2. **Submission of Property to the Act**. The Developer, by recording this Declaration, does hereby submit and subject the Parcel and the Property to the provisions of the Act and hereby establishes a horizontal property regime with private elements as authorized and described in the Act and to be hereafter known as "**1909 Kimbark Drive Cottages**".

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

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

5. **Association**.

(a) Creation of Association of Unit Owners for Administration and Operation of the Property. There has been or will be formed an Association having the name "**1909 Kimbark Drive Cottages Owners Association, Inc.**", a Tennessee not-for-profit corporation, which Association shall be the governing body for all of the Unit Owners and shall be operated to provide for the maintenance, repair, replacement, administration, operation and care of the Property as provided in the Act, this Declaration and Bylaws. The Unit Owners shall each be members of the Association, with each Unit holding an undivided membership interest in the Association which shall be appurtenant to such Unit, each such membership interest appurtenant to a Unit being in an equal share, subject to the provisions concerning voting hereinafter set forth. The Bylaws for the Association shall be the Bylaws attached to this Declaration as Exhibit C and made a part hereof. The Board of Directors of the Association shall be elected and shall serve in accordance with the provisions of the Bylaws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the use and benefit of Unit Owners in accordance with the provisions of the Declaration and Bylaws. Each Unit Owner shall be a member of the Association so long as such Owner is a Unit Owner. A Unit Owner's membership shall automatically terminate when such Owner ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall automatically succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be divided among the respective Unit Owners with one (1) vote granted to each Unit.

(b) Voting Membership. The Members shall be all Unit Owners and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in

any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

(c) Management of Property. The Board shall have the authority, but not the requirement, 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 (d) below. The Board shall require that any 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 paragraph 10 below. Any vote of the Board to adopt any form of management of the Property without the services of a professional property management company shall be subject to the prior approval of a majority of all first mortgagees of Units.

(d) Use by Developer. During the period of sale of any Units by the Developer, the Developer, and the 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 the Units. While the Developer owns any of the Units and until each Unit sold by it is occupied by the purchasers, the Developer and its employees may maintain customary signs in connection therewith.

(e) Non-Liability of the Directors, Board and Officers. Neither the directors, the Board or the officers of the Association shall be personally liable to the Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors, Board or officers, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Unit Owners shall indemnify and hold harmless each of the directors, Board or officers, and their respective heirs, executors, administrators, successors and assigns in accordance with the Charter of the Association and Bylaws.

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

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

7. **Ownership of Interests in the Association**. Subject to the provisions concerning voting rights hereinabove contained, each Unit shall be allocated an equal percentage ownership in the Association. The percentages of ownership interests shall remain constant unless hereafter changed by recorded amendment to this Declaration consented to in writing by the Unit Owners, in accordance with the requirements hereinafter contained. Said ownership interest shall be an undivided interest, and the undivided membership interests in the Association shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in the Association corresponding to said Unit. The undivided percentage of ownership

in the Association corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit.

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

9. **Storage Areas and Parking Spaces**. Any storage areas on the Property, except those inside the Units and those which are Private Elements, shall be used by such Unit Owners in such manner and subject to such rules and regulations as the Board may prescribe. Parking spaces within the Parcel, even though located on Private Elements, shall be used by such Unit Owners in such manner and subject to such rules and regulations as the Board may prescribe.

10. **Common Expenses**.

(a) **Equal Payment of Common Expenses**. Each Unit Owner shall pay an equal share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance with the Declaration and Bylaws (which expenses are herein sometimes referred to as "common expenses"), including, but not limited to, the maintenance and repair thereof and any and all replacements and additions thereto. Payment of common expenses, including any prepayment thereof required by any contract for a sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. No Unit Owner shall be exempt from payment of such Unit Owner's proportionate share of the common expenses by waiver or non-use of enjoyment of the Common Elements, or by abandonment of such Owner's Unit. If any Unit Owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof, together with interest thereon at the maximum rate then allowed by applicable law, after said common expenses become due and payable, shall constitute a lien on the interest of such Unit Owner in the Unit as provided in the Act. Each assessment for common expenses against a Unit shall also be the personal obligation of the Unit Owner at the time the assessment is due. A successor in title to a Unit shall not be personally obligated to pay any unpaid assessments for common expenses which have been levied against a Unit unless such successor in title expressly assumes the payment of the same,

provided, however, any lien encumbering a Unit as above described shall not be affected by transfer of a Unit.

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

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

(d) **Special Assessments**. In addition to the 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 and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Unit Owners.

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

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

13. **Insurance.** The Board shall have the authority to and shall obtain insurance for the Common Elements against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements, and against such other hazards and for such amounts as the Board may deem advisable. Such insurance may include all or any portion of all Limited Common Elements. Insurable replacement cost shall be deemed to be the cost of restoring the Common Elements, or any part thereof to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insuror. The premiums for such insurance shall be a common expense.

The Board shall also have authority to and shall obtain comprehensive public liability insurance, in such amounts as it deems desirable, and worker's compensation insurance and other liability insurance as it deems desirable, insuring each Unit Owner. mortgagees of record, if any, the Association, its officers, directors, Board and employees, the Developer, and the Managing Agent, if any, from liability in connection with the Common Elements. The premiums for such insurance shall be a common expense. The Board shall retain in safekeeping any such public liability policy for six (6) years alter the expiration date of the policy.

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

Each Unit Owner shall be responsible for obtaining his own insurance on the Unit and contents of such Owner's Unit, as well as additions and improvements thereto, decorations, furnishings and personal property therein, and personal property stored elsewhere on the Property.

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

(a) **Obligations of Unit Owners**. Each Unit Owner, at such Owner's expense, shall be responsible for all maintenance of and repairs to such Owner's Unit, Private Elements and Limited Common Elements.

(b) **Obligations of Association**. The Association shall be responsible for maintenance of and repairs within the Common Elements, other than Limited Common Elements.

(c) **Loss Attributable to Unit Owner**. Notwithstanding the foregoing, if, due to the act or neglect of a Unit Owner, or the agent, servant, tenant, family member, invitee, licensee or household pet thereof, damage shall be caused to the Common Elements, or maintenance, repair or replacement are required which would otherwise be a common expense,

then such Unit Owner shall pay for such damage or such maintenance, repair and replacements, as may be determined by the Association, to the extent not covered by the Association's insurance or sufficient proceeds are not collected from the insurance carrier.

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

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

(a) **Architectural Control**. No structure may be erected, placed or altered on any Private Elements or Limited Common Elements. and no building permit may be obtained, until the construction plans and building specifications and a plan showing (i) the location of improvements on the Private Elements; (ii) the grade elevation (including rear, front and side elevations); (iii) the type of exterior material and roof material (including delivery of samples thereof); (iv) the color of paint or stain to be applied to any exterior surfaces and the color of the roof material (including delivery of samples thereof); and (v) the location and size of the driveway (which shall be exposed aggregate concrete) shall have been approved in writing by both Unit Owners.

(b) **Alterations, Additions or Improvements**. Except as provided specifically 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 other Unit Owner. The Board may authorize and charge as common expenses alterations, additions and improvements of the Common Elements and Private Elements as provided in the Bylaws. Any Unit Owner may make alterations, additions or improvements wholly within the interior of the Unit of the Unit Owner without the prior written approval of the other Unit Owner, but such Unit Owner shall be responsible for any damage to other Unit, the Common Elements, the Private Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements.

(c) **No Changes on Exterior without Approval**. Notwithstanding anything contained herein, or contained in the Bylaws, to the contrary, no alteration or change, including but not limited to changes to structure, paint and stain color, roofing shingles, exterior materials, driveway, gardens and landscaping, may be made to the exterior of any Unit, to any Private Element or to any Limited Common Area without the prior written approval of the other Unit Owner.

16. **Decorating**. Each Unit Owner, at such Owner's expense, shall furnish and be responsible for all decorating within such Owner's Unit and Private Elements serving such Unit.

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

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

18. **Association's Right to Purchase at a Foreclosure Sale**. 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 common expenses under the Act, or an order or direction of a court, or at any other involuntary sale, upon the consent or approval of both Unit Owners. Such consent shall set forth a maximum price which the Board or its duly authorized agent may bid and pay for said Unit.

The Board shall have authority 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 or lease 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 Property other than the Unit, or interest therein, to be purchased or leased, and the percentage interest in the Association appurtenant thereto.

19. **Use and Occupancy Restrictions**. Subject to the provisions of the Bylaws, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed and as allowed by municipal zoning laws. Each Unit shall be used as a residence or such other use permitted by this Declaration, and for no other purposes except that professionals may use their residence (not in violation of applicable zoning laws) as a home office, provided that no customers or visitors come to the Unit and no merchandise, inventory or equipment is kept, stored, shipped or otherwise dealt with on the Property. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from: (a) maintaining a personal professional library; (b) keeping personal business or professional records or accounts; or (c) handling personal or professional telephone calls or correspondence. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions, provided they do not violate the above restrictions.

No Unit or Common Elements may be used in violation of the restrictions and provisions contained herein or in the Bylaws.

The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, customers, invitees and licensees for access, ingress to and egress from

the respective Units and for such other purposes incidental to use of the Units; provided, however, that any areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession or easement, presently in existence or entered into by the Board at some future time, affecting any part or all of said Common Elements.

The Limited Common Elements, including, but not limited to, landscaping, gardens, lawn area and driveway, shall be maintained by the respective Unit Owner in the same condition, repair, configuration and layout as at the date of execution hereof.

20. **Remedies**. In the event of any violation of the provisions of the Act, Declaration, Bylaws or rules and regulations of the Board or Association by any Unit Owner (either by the Unit Owner's own conduct or by the conduct of any other Occupant of such Owners Unit), the Association, or its successors or assigns, or the Board, or its agent, or the other Unit Owner, shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, Bylaws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to sell the Unit through judicial process as provided hereinbefore, or for any combination of remedies, or for any other relief. All expenses of the Board or other Unit Owner in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the maximum rate of interest then allowed by applicable law, until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of such Owner's respective share of the common expenses, and the Board or other Unit Owner shall have a lien for all of the same, as well as for nonpayment of the Unit Owner's respective share of the common expenses, upon the Unit and ownership interest in the Association of such defaulting Unit Owner and upon all of such Owner's additions and improvements thereto and upon all of such Owner's personal property in such Owner's Unit or located elsewhere on the Property, provided, however, that such lien shall subordinate to the lien of a recorded mortgage or deed of trust on the interest of such Unit Owner, except for the amount of the proportionate share of said common expenses which become due and payable from and after .the date on which the said mortgage or deed of trust owner or holder either takes possession of the Unit, accepts a conveyance of any interest therein (other than as a security) or files suit to foreclose its mortgage or deed of trust. 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, or the other Unit Owner, shall have the authority to correct such default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively. or otherwise, by the Board or other Unit Owner. This paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of record of mortgages and deeds of trust against 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 or other Unit Owner the right, in addition to any other rights provided for in this Declaration; (a) to enter (either peaceably or forcibly without liability to such Unit Owner for such entry) upon the Unit, or any portion of the Property upon which, or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, or the other Unit Owner, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or (c) to take possession (either peaceably or forcibly without liability to such Unit Owner for such entry) of such Unit Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law.

If any Unit Owner (either by such Owner's conduct or by the conduct of any other occupant of his Unit) shall violate the Act, or any of the covenants or restrictions or provisions of this Declaration 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 other Unit Owner, or shall occur repeatedly during any ten (10) day period after such written notice or request to cure such violation from the Board or other Unit Owner, then the Board or other Unit Owner, shall have the power to issue to said defaulting Owner a notice in writing terminating the rights of the said defaulting Owner to continue as a Unit Owner and to continue to occupy, use or control such Owner's Unit, and thereupon an action in equity may be filed by the Board, or other Unit Owner, 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 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 such Owners 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 defaulting 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 Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Unit and the Unit Owner's corresponding percentage of ownership in the Association, and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide that the purchaser shall take the interest in the Unit ownership sold subject to this Declaration.

In addition to the other remedies provided for herein, in the event of a default by a Unit Owner in the payment of such Unit Owner's respective share of the common expenses which default continues for a period of ninety (90) days, the Board shall have the power and authority to place such Unit Owner's name on a list of delinquent Unit Owners, which list may be posted at a place designated by the Board for notices.

21. **Amendments.** Except as specifically stated elsewhere herein, and except for this Section 21, any provisions of this Declaration may be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission, signed by Unit Owners owning not less than all of the total Units and acknowledged, provided, however, that all lien holders of record have been notified by certified mail of such change, modification or rescission, and an affidavit by the secretary of the Association certifying to such mailing is made a part of such instrument.

The change, modification or rescission, whether accomplished under the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the office of the Register of Deeds of Davidson County, Tennessee; provided, however, that no provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act.

22. **Notices**. Notices provided for in the Act, Declaration or Bylaws shall be in writing, and shall be addressed if to a Unit Owner, to the address of such Owner's Unit, and if to the Association or Board, as the case may be to the registered office, as set forth in Charter of the Association or to such other address as may be designated by the Association or Board from time to time, or at such other address as may be hereinafter provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

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

23. **Severability**. If any provision of the Declaration or Bylaws, 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 Bylaws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration or the Bylaws shall be construed as if such invalid part was never included therein.

24. **Perpetuities and Restraints on Alienation**. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States, Barak Hussein Obama.

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

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

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

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

27. **Condemnation**. In the event of a taking in condemnation or by eminent domain of a part of the Common Elements, the award made for such taking shall be payable to the Board for and on behalf of the Association and all mortgagees affected. If a majority of the Board in

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

28. **Rights Reserved**. The Unit Owner's right of enjoyment in the property commonly owned by the Association as herein created shall be subject to:

(a) The right of the Association, as provided in its Bylaws, 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; and

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

(c) The right of the Association to diminish in any way or to dedicate or transfer all or any part of the Common Elements to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the members entitled to vote thereon, provided that no such diminution, dedication or transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless the Developer (its successors or assigns) and members of the Association entitled to cast ninety percent (90%) of the total votes of members have been recorded, agreeing to such act; and

(d) The right of the Association to grant such easements and rights-of- way to such utility companies or public agencies or authorities as it stlall deem necessary for the proper servicing and maintenance of the Common Elements and the Units.

29. **Provisions Relative to Mortgagee's Rights and to Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Regulations**. Notwithstanding anything to the contrary contained in this Declaration, or in the Bylaws which are attached hereto, all terms, conditions and regulations which are now existing, or which may be amended from time to time, by the Federal Home Loan Mortgage Corporation ("FHLMC") or Fannie Mae ("Fannie Mae") pertaining to projects of this nature are hereby incorporated as terms and conditions of the Declaration and Bylaws and such shall be governing upon the Property, the Developer, and the Association, so long as such terms or conditions are not inconsistent with the laws of the State of Tennessee as found in Tennessee Code Annotated, Section 66-27-101, et seq., as such may be amended.

Specifically, without limitation upon the foregoing, the following provisions shall be fully effective and controlling over any terms of the Declaration or Bylaws which are in conflict. Any portions of such Declaration or Bylaws which are in conflict with this paragraph, or any

portion of the FHLMC and Fannie Mae regulations pertaining to planned unit developments, are hereby deleted and the following rights of mortgagees are itemized as follows:

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

(b) Any first mortgagee, or other transferee, of a Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage, deed of trust, foreclosure of the mortgage or deed of trust, or deed in lieu of foreclosure shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit, which accrue prior to the time such holder comes into possession of the Unit.

(c) Unless two-thirds (2/3) of the first mortgagees (based upon one (1) vote for each mortgage owned), or owners (other than the Developer) 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 percentage ownership of the Association may be reduced due to the addition of a phase or phases to the horizontal property regime as provided hereinabove.

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

(iii) By act or omission seek to abandon the horizontal property regime or status of the Property, or encumber, sell or transfer the Common Elements, except for the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements.

(iv) Use hazard insurance proceeds for losses to any Property (whether to individual Units or Common Elements) for other than the repair, replacement, or reconstruction of such improvements, except as provided in Tenn. Code Ann., Section 66-27-118, in case of substantial loss to the Units and/or Common Elements to the horizontal property regime.

(d) Unit owners, first mortgage holders, and insurers or guarantors of any first mortgage shall have the right to examine the books, records, current copies of the Declaration and Bylaws, and rules and regulations of the Association during normal business hours and upon request.

(e) An adequate reserve fund for maintenance, repair and replacement of Common Elements which must be replaced on a periodic basis will be established and funded by regular monthly payments rather than by special assessments. A working capital fund for the initial months of operation equal to at least two (2) months' assessments for each Unit must be established, collected and transferred to the Association at the time of closing of sale by the Developer of each Unit and maintained in an account for the use and benefit of the Association.

(f) As set forth in Tenn. Code Ann., Section 66-27-120, all taxes, assessments and charges which may become liens prior to the first mortgage under the laws of the State of Tennessee shall relate only to the individual Unit and not to the horizontal property regime as a whole.

(g) No Unit Owner or any other party shall have priority over any rights of the first mortgagees of Units and/or Common Elements.

(h) Any agreement for professional management of the horizontal property regime, whether it be by the Developer, its 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. Prior to passage of control from the Developer, the Association shall not be bound, directly or indirectly, to contracts or leases unless there is a right of termination of such upon not more than ninety (90) days' notice without penalty.

(i) Upon written request, the Association shall give to any mortgagee of a Unit, FHLMC, Fannie Mae, any lending institution servicing such mortgages as are acquired by FHLMC or Fannie Mae, or any insurer or guarantor of a mortgage or deed of trust on a Unit, timely notice in writing of any loss to or the taking of the Common Elements if such loss or taking exceeds $50,000.00, or of any other condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage, 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 "Mortgages of Units" as must be established pursuant to the Bylaws, for a list of mortgagees to be notified hereby.

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

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

(l) A first mortgagee of a Unit Owner, upon written request, is entitled to written notification from the Association of any default in the performance by such Unit Owner of any obligation under this Declaration and/or Bylaws which is not cured within sixty (60) days.

(m) The casualty and liability insurance and fidelity bond coverage required to be maintained by the Association shall meet the requirements specified in Fannie Mae Lending Guide, Chapter Three, Part 5, "Insurance Requirements."

30. **Party Walls**. Any wall built as a part of the original construction of a structure upon the Private Elements and placed on the dividing line between two Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be equally shared by the Unit Owners who make use of the wall, provided that the party causing any damage shall be responsible for the full cost thereof in accordance with applicable law.

31. **Legal Opinion**. The legal opinion required in Tennessee Code Annotated Section 66-27-103(b) to create a planned unit development under said statute is attached hereto as Exhibit D.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of this the _____ day of July, 2016.

MONARCH DEVELOPMENT, LLC

By: _____

Title: Member

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared Robert Schneider, 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 ~~President~~ Member of MONARCH DEVELOPMENT, LLC, a Tennessee limited liability company, the within named bargainor, and that he as ~~President~~ Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as ~~President~~ Member.

Witness my hand and official seal at Nashville, Tennessee, this 22d day of July, 2016.

_____
Notary Public

PAUL F. SOPER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

My Commission Expires: 3/6/18

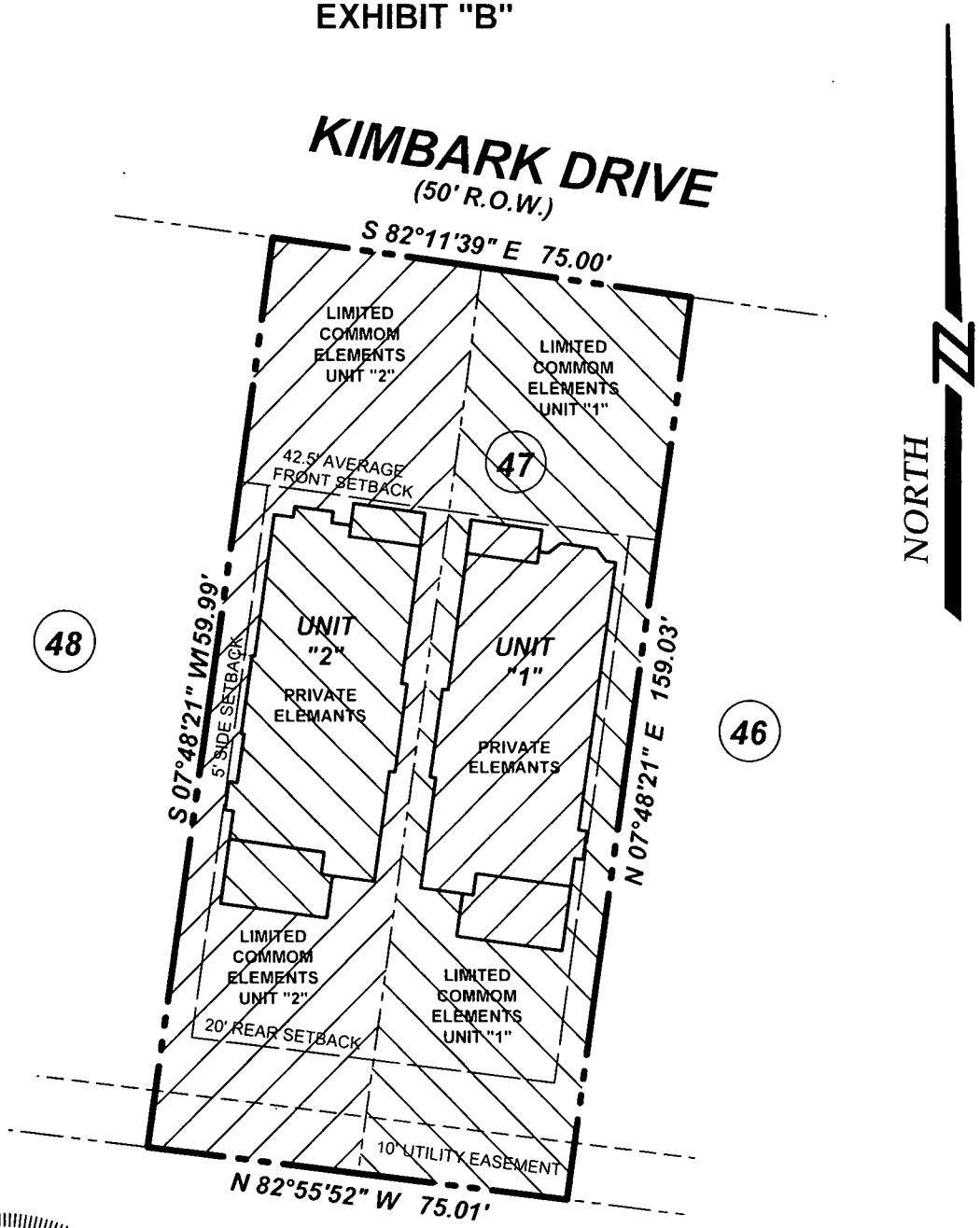
EXHIBIT A

LEGAL DESCRIPTION OF PARCEL

LAND in Davidson County, Tennessee being Lot No. 47 on the Plan of Colonial Heights, as of record in Book 1130, Page 102, Register's Office for Davidson County, Tennessee.

Being part of the same property conveyed to MONARCH DEVELOPMENT, LLC, A TENNESSEE LIMITED LIABILTY COMPANY by deed from M2E HOLDINGS, LLC, A TENNESSEE LIMITED LIABILITY COMPANY dated July 22, 2016, of record as Instrument No. 20160722-0075896, said Register's Office.

EXHIBIT "B"



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

SMITH LAND SURVEYING, LLC
7534 PINEWOOD ROAD PRIMM SPRINGS, TN. 38476
TEL:(615)568-3500
SMITHLANDSURVEYINGLLC@GMAIL.COM

1909 KIMBARK COTTAGES

UNIT "1" = 1909 "A" KIMBARK DRIVE
UNIT "2" = 1909 "B" KIMBARK DRIVE

LOT 47, COLONIAL HEIGHTS SUBDIVISION
NASHVILLE, DAVIDSON COUNTY
TENNESSEE

DATE: JULY 15, 2016
SCALE: 1" = 30'

EXHIBIT C

BYLAWS OF ASSOCIATION

BY-LAWS OF 1909 KIMBARK DRIVE COTTAGES OWNERS ASSOCIATION, INC.

ARTICLE I
Members (Unit Owners)

Section 1. **Eligibility.** The members of **1909 Kimbark Drive Cottages Owners Association, Inc.**, a Tennessee not-for-profit corporation, shall consist of the Unit Owners of the property know as Home at 1909 Kimbark Drive, which is located in Nashville, Davidson County, Tennessee (the "Property"). If a Unit Owner is a trust, then the member shall be a beneficiary of such trust, and if a Unit Owner or such a beneficiary is a corporation or partnership, the member may be an officer, partner or employee of such Unit Owner or beneficiary.

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

Section 3. **Regular Meetings**. The first regular meeting of the Unit Owners (the "First Meeting") may be held, subject to the terms hereof on any date, at the option of the Board. All such meetings of Unit Owners shall be held at such place in Davidson County, Tennessee, and at such time as specified in the written notice of such meeting which shall be delivered to all Unit Owners at least ten (10) days prior to the date of such meeting.

Section 4. **Special Meetings**. Special meeting of Unit Owners may be called by a majority of the Unit Owner. Special meetings shall be called by delivering written notice to all Unit Owners not less than ten (10) days prior to the date of the meeting, stating the date, time and place of the special meeting and the matters to be considered.

Section 5. **Delivery of Notice of Meetings**. Notices of meetings shall be delivered either personally or by mail to Unit Owners at the addresses given to the Board by Unit Owners for such purpose, or to a Unit Owner's unit if no separate address for such purpose has been given to the Board.

Section 6. **Voting.** Each Unit shall have one (1) vote. If any Unit Owner consists of more than one (1) person, the voting rights of such Unit Owner shall not be divided, but shall be exercised as if the Unit Owner consisted of only one (1) person in accordance with the proxy or other designation made by the persons constituting such Unit Owner.

No Unit Owner who is in default in the payment of his assessments hereunder shall be entitled to exercise his right to vote until he has cured such default, a Unit Owner shall be

deemed to be in default if he has not paid his assessments to the Board, its agent, or a paying Unit Owner within fifteen (15) days after the due date thereof. A Unit Owner may protest the amount of the assessment, but it still must be paid during the pendency of his protest to the Board.

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 "Directors"). 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.

Section 2. **Qualification**. One Director shall be elected by each of the Unit Owners (the "Unit Owner Directors") and the third director shall be elected by unanimous decision of the two (2) Unit Owner Directors. Should any Unit Owner Director transfer title to his or her Unit, the respective successor Unit Owner shall elect a new Director to replace the previous Unit Owner Director. If a Director shall cease to meet such qualifications during his term, he shall thereupon cease to be a Director and his place on the Board shall be deemed vacant.

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

Section 4. **Meetings**. A regular annual meeting of the Board shall be held following the regular annual meeting of Unit Owners. Special meetings of the Board shall be held upon call of 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 overnight courier. 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 he taken by the Board without a meeting. A Director's attendance at a meeting shall constitute his waiver of notice of said meeting.

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

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

Section 7. **Quorum**. A simple majority of Directors shall constitute a quorum.

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

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

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

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

d) To formulate policies for the administration, management and operation of the property and the Common Elements;

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

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

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

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

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

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

k) To borrow money for the purpose of repair or restoration of Common Elements without the approval of the members of the Association;

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

m) 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;

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

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

Section 9. **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 10. **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 which, by law, have been delegated to Unit Owners.

ARTICLE III
Officers

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

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

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

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

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

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

Section 4. **Vacancies**. Vacancies in any office shall be filled by the Board by a majority vote

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

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

ARTICLE IV
Assessments

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

Section 2. **Payment of Assessments; Liens**. It shall be the duty of every Unit Owner to pay his equal share of the expenses as provided in the Declaration, and as assessed in the manner provided.

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

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

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

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

same and for all costs and expenses, including attorney's fees, incurred by reason of such lien.

ARTICLE V
Use and Occupancy Restrictions

Section 1. **General**. No unlawful, 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 and its Private Elements in good condition and in good order and repair, at his own expense, and shall not do or allow anything to be done which may increase the cost or cause the cancellation of insurance on other Units or on the Common Elements.

Section 2. **Trash**. Trash, garbage and other waste shall be kept only in sanitary containers, and shall be disposed of in a clean and sanitary manner.

Section 3. **Storage**. Articles of personal property belonging to any Unit Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing, and other articles, shall not be stored or kept in the Common Elements.

Section 4. **Single Family Residence**. Each unit shall be used as one single family residence only.

Section 5. **Rules and Regulations**. Unit Owners shall be subject to such further restrictions as may be contained rules and regulations of the Association concerning the use of Units and the Common Elements which may be enacted from time to time by the Board. Such rules and regulations shall be binding rules and regulations of the Association and copies of such rules and regulations and any amendments or additions thereto shall be furnished to all Unit Owners upon request.

ARTICLE VI
Contractual Powers

No contract or other transaction between this Association and one (1) or more of its Directors, or between the Association and any corporation, firm or association in which one (1) or more of the Directors of the Association are Directors, or are financially interested, is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

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

b) The contract or transaction is just and reasonable as to the Association at

the time it is authorized or approved.

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction.

ARTICLE VII
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 shall be recorded in the Office of the Register's Office of Davidson County, Tennessee.

ARTICLE VIII
Indemnification

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

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

Section 3. **Advance Payment**. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action,

suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the persons or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article VIII.

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

ARTICLE IX
Mortgages

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

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

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

ARTICLE X
Definition of Terms

The terms used in these By-Laws, to the extent they are defined therein, shall have the same meaning as set forth in the Declaration of Covenants, Conditions and Restrictions for **1909 Kimbark Drive Cottages**, which is of record in the Office of the Register of Deeds for Davidson County, Tennessee.

The term "member", as used in these By-Laws, means "Unit Owner" as defined in the Declaration.

ARTICLE XI
Conflicts

These By-Laws are set forth to comply with the requirements of Chapter 27 of Title 66, Tennessee Code Annotated, as it 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 statute or of the Declaration, the provisions of said statute or of the Declaration, as the case may be, shall control.

Certificate of Adoption:

The undersigned, being the Incorporator of the Corporation, hereby adopts the foregoing bylaws of **1909 Kimbark Drive Cottages Owners Association, Inc.** on this the 22nd day of July, 2016.

Paul F. Soper, Incorporator

EXHIBIT D

LEGAL OPINION

July 22, 2016

1909 Kimbark Drive Cottages Owners Association, Inc.
Attn: President
1909 Kimbark Drive, Unit A
Nashville, Tennessee 37215

Re: **1909 Kimbark Drive Cottages**, a Horizontal Property Regime with Private Elements

Dear Sir:

I have reviewed the following:

1. Declaration of Covenants, Conditions and Restrictions for **1909 Kimbark Drive Cottages**, dated July 22, 2016, to be recorded at the Register of Deeds office for Davidson County, Tennessee (the "Declaration").

2. By-laws of **1909 Kimbark Drive Cottages Owners Association, Inc.**, attached as Exhibit B to the Declaration.

3. The site-plan for **1909 Kimbark Drive Cottages**, attached as Exhibit C to the Declaration.

4. Charter of **1909 Kimbark Drive Cottages Owners Association, Inc**, a Tennessee not for profit corporation, dated July 22, 2015, which corporation shall be created upon the filing of said Charter with the Secretary of State of Tennessee, a file-stamped copy of which shall then be recorded at the Register of Deeds office for Davidson County, Tennessee.

Each of the foregoing documents is incorporated herein by reference.

Based solely on my review of these documents, I am of the opinion that all legal documents required pursuant to Tennessee Code Annotated Section 66-27-103(b) for the creation of a planned unit development under said statute have been prepared and that, upon recording the same at the Register of Deeds office for Davidson County, Tennessee and the Tennessee Secretary of State's office, as applicable, a planned unit development will have been created under that statute.

Very truly yours,

Paul F. Soper, Esq.