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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COTTAGES AT 5138 TUSCULUM COURT A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS (THIS IS A PLANNED UNIT DEVELOPMENT PURSUANT TO TENNESSEE CODE ANNOTATED 66-27-103(b))

This DECLARATION, made and entered into by **Zindan Berwary** for the convenience hereinafter referred to as the "Declarant," for itself, its successors, grantees and assigns.

WITNESSETH:

WHEREAS, the Developer is the legal title holder of certain real estate located in the county of Davidson, State of Tennessee, and described on Exhibit "A" attached hereto (the Parcel"); and

WHEREAS, the Declarant intends to and does hereby submit the Property described on Exhibit "A" together with all buildings structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any way pertaining thereto (the "Property") to the provisions of the Horizontal Property Act of the State of Tennessee for the express purpose of establishing thereon a horizontal property regime to be known as **The Cottages at 5138 Tusculum Court**; and,

WHEREAS, the Developer further desires to establish said property for the benefit of Developer and for the mutual benefit of any future owners or occupants of the Property or any part thereof, and intends that all future owners, occupants, Mortgagees, and any other person 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, for the purpose of enhancing the value, desirability and attractiveness of the Property

NOW, THEREFORE, the Declarant declares as follows

1 Definitions, As used herein, unless the context otherwise requires;

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

(b) "Association" means **The Cottages at 5138 Tusculum Court Owner's Association**, a Tennessee not-for-profit corporation

(c) "Board" means the Board of Directors of the association

(d) "Buildings" means the buildings located on the Parcel and forming part of the Property and Containing the Units. The "Buildings" shall be as delineated on Exhibit "B" attached hereto

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

(f) "Common Elements" means all of the Property except for the Units and private elements, and, without limiting, the generality of the forgoing, shall include those items defined as "General Common Elements" and "Limited Common Elements" as those terms are as defined herein.

(g) "Limited Common Elements Units A & B" shall mean if this development has a shared driveway, then that part of the shared driveway as shown on Exhibit "B" and labeled Limited common elements – Unit A & B and is dedicated for use by both units Each unit shall have the right of use as may be required for the purposes of

access, ingress to, and egress from their respective unit and shall not be blocked in any way These rights shall extend not only to each unit owner, but also to their guest, servants, tenants, family members, and invitees. Each unit owner shall pay his/her equal proportionate share of expenses for necessary maintenance, repair and replacement of the driveway needed for reasonable passage of ingress and egress.

(h) "Limited Common Elements" shall mean those portions of the Limited Common Elements designated herein for the exclusive use of the one (1) Unit to which it is assigned.

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

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

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

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

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

(n) "Plat" means Exhibit "B" submitted pursuant to the provisions of the Act showing the number of each Unit, its area, and the exterior boundary of its private elements location and other date necessary for identification

(o) "Property" means all the land and space comprising the Parcel, and all improvements and structures thereon, including the Building 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

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

(q) "Unit" means a portion of the Property as shown on the Plat for separate ownership and shall include its numbered garage if any, the Private Elements and the residence and improvements now and hereafter located hereon 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 undivided membership of each Unit Owner in the Association Any Unit may be jointly or commonly owned by more than one person It is intended that the term "Unit" shall have the same meaning as the term "Apartment" as used in the Act.

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

(s) "Rules and regulations" refer to the rules and regulations concerning the use of the units and the Common Elements, as adopted from time to time by the Board in accordance with the Declaration and By-Laws

(t) "Private Elements" shall have the meaning attributed in the Act, and includes the lot area upon which a Unit is located and the improvements located thereon, as described in the Declaration, and for which fee simple ownership and exclusive use is reserved to the Unit only. The fee simple absolute title to the land underneath each Unit may also be referred to herein as a "Lot" or "Lots" and is a private element owned by the Unit Owner.

2. **Submission of Property to the Act.** The Developer does hereby submit and subject the Property to the provisions of the Act and hereby establishes a horizontal property regime as authorized and described in the Act and to be hereafter known as **The Cottages at 5138 Tusculum Court.** All the Developers/Declarant's rights under this declaration shall be automatically transferred to his successor in ownership of the two units and shall continue to automatically transfer to their heirs, successors or assigns, and shall inure to the benefit of each owner thereof

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

4 **Unit.** The legal description of each Unit shall consist of the identifying number or symbol of such Unit (or combination) as shown on the Plat along with its garage if any, and shall include the Private Elements and the residence and improvements now and hereafter located thereon Every deed, lease, mortgage, deed of trust or other instrument shall legally describe a Unit by its identifying number or symbol 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 matter cause such Owner's Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat.

5 (a) **Association of Unit Owners and Administration and Operation of the Property.**

There has been or will be formed an Association having the name **The Cottages 5138 Tusculum Court Owner's Association**, a Tennessee not-for-profit corporation, which Association shall be 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 the master Deed and By-Laws 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 of Directors of the Association shall be elected and shall serve in accordance with provisions of the By-Laws The fiscal year of the Association shall be determined by the Board, and may by 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, 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 provisions of the declaration and By-Laws 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 simultaneously succeed to the former Unit Owner's membership in the Association The aggregate number of votes for all members of the Association shall be divided among the respective Unit Owners with, one (1) vote granted to each Unit

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

(c) Initial Management Contract The First Board, appointed as provided herein, shall ratify and approve the Management Agreement between the Developer, on behalf of the Association, and a management corporation, to act as Managing Agent for the Property for a term as approved by said First Board, but not to exceed one (1) Year,

(d) Use by Developer. During the period of sale by the Developer of any Units, the Developer, and the his agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access, ingress to and egress from the Building 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 Developer is occupied by the purchaser, the Developer and employees thereof may use and show one or more of such unsold or unoccupied Units as a model Unit or Units and may maintain customary signs in connection therewith,

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

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 By-Laws, the determination thereof by the Board shall be final and binding on each and all such Unit Owners

7, **Ownership of the Common Elements.** Ownership of the Common elements shall be vested in the Association.

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 Limited Common Elements and portions of the Property subject to leases made by or assigned to the Board) in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend to each Unit Owner and the agents, servants , tenants, family members customers invitees and licensees thereof, However each Unit Owner shall have the right to the exclusive use and possession of the Private Elements and Limited Common Elements contiguous to and serving such Unit alone or with adjoining Units and such rights shall be used by each respective Unit Owner, and shall be subject to any rules and regulations established by the Association.

9. **Storage Areas and Parking Spaces.** Pursuant to Rules and Regulations approved by the Association, if any, with exception that all areas shown as limited common area A&B will be considered a joint driveway and egress and ingress rights granted to both A unit and B unit for purposes of passage and use for parking.

10. (a) **Common Expenses and Enforcement** Each Unit Owner shall pay such Owner's proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in, conformance with the Declarations and By-Laws (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 By-Laws No Unit Owner shall be exempt from payment of such Owner's proportionate share of the common expenses by waiver or non-use of enjoyment of the Common Elements , or by abandonment of the 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 lesser of the rate often (10%) percent per annum or the highest 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 as provided in the Act.
Each assessment for common expenses against a Unit shall be the personal obligation of the Owner of the Unit 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 However, any lien encumbering a Unit as above described shall not be affected by transfer of a Unit

The Developer stall not be required to expend from its own funds any sums of money for maintenance, improvements, or any other expenses of the administration of the Common Elements, and no Unit owned by the Developer shall be assessed for common expenses, or otherwise This paragraph of Section 10, subsection (a), may not be modified or amended without the unanimous written consent of all Unit Owners.

(b) Enforcement. In the event any Unit Owner fails to maintain such Owner's Unit, or the Limited Common 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) Deed of Trust Protection. The lien for common expenses payable by a Unit Owner shall be subordinate to the lien of a recorded 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 deed of trust This subparagraph (c) shall not be amended, changed, modified or rescinded without the prior written consent of all 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 Unit Owners,

11, **Mortgage 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 Owner's respective Unit together with such 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 respective percentage 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 its Private Elements and its 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 his respective percentage of ownership interest in the Association and, in said event, such taxes shall be a common expense,

13, **Insurance, Damage and Reconstruction.** The Board shall have the authority to and shall obtain insurance for the Property and common Elements exclusive of the additions within, improvements to and decorating of the Units by the Unit Owners, against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements and the Units, and against such other hazards and for such amounts as the Board may deem advisable. Insurable replacement cost shall be deemed to be the cost of restoring the Common Elements, Units or any part thereof to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of and the proceeds thereof shall be payable to, the Board of the Association, as the trustee for each of the Unit Owners in direct ratio to said Unit Owner's respective percentage of ownership in the common Elements, as set forth in the Declaration, and for the holders of mortgages and deeds of trust on his Unit, if any The-policy of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against individual Unit Owners. The premiums for such insurance shall be a common expense, However, at the option of the Board, and upon written notice to all Unit Owners, premiums for such insurance shall be separately billed to each Unit Owner for such Owner's Unit and the corresponding percentage of ownership in the Common Elements,

In the event of damage to or destruction of the Building or Common Elements as a result of fire or other casualty covered by insurance proceeds, the Board shall, in its discretion, with the prior written approval of a majority of the mortgagees of the Units affected, determine and, without intervention of any Unit Owner, arrange for the prompt repair and restoration of the damaged portions of all Units, Buildings and Common Elements substantially in accordance with the original plans and, specifications therefor Where the insurance indemnity is insufficient to cover the cost of such repairs and restoration, the deficit shall be paid by all Unit Owners directly with each Unit Owner to bear an equal proportion thereof. The Board shall not be responsible for the repair, replacement or restoration of any Unit or Private Elements for which the responsibility of maintenance and repair is that of a Unit Owner, or for furniture, furnishings, fixtures, appliances, or equipment installed in the Unit by a Unit Owner or occupant

The Board shall also have authority to and shall obtain comprehensive public liability insurance, in such amounts as it deems desirable, and workmen'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 employed, the Declarant, and the Managing Agent, if any, from liability in connection with the common expense However, at the option of the Board, and upon written notice to all Unit Owners, premiums for such insurance shall be separately billed to each Unit Owner

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 By-Laws 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

In the event the Board does not maintain insurance on the Units and the Private Elements, each Unit Owner shall be responsible for obtaining such Owner's own insurance on the 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. In addition, in the event a Unit Owner desires to insure against personal liability and loss or damage by fire or other hazards above and beyond the extent that liability, loss or damage to such Owner is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Board for all of the Unit Owners as part of the common expenses, as above provided, said Unit Owner may, at such Owner's option and expense, obtain additional insurance,

14. **Maintenance, Repairs and Replacements** Each Unit Owner, at such Owner's own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within and to the exterior of his Unit and its Private Elements and Limited Common Elements

> If, due to the act or neglect of a Unit Owner, or of the agent, servant, tenant, family member, invitee, licensee or household pet thereof damage shall be caused to the Private Elements or to a Unit owned by others, or if general maintenance of utility lines, etc, are required and such repair or damage is on another unit owner's private elements or limited common elements, then the Unit Owner which caused the damage or required the repair on the other parties private elements or limited common elements shall pay for such damage or such maintenance, repair and replacements.

A joint and mutual easement hereby exists for any installation, maintenance, repair and replacement of any and all pipes, wires, conduits, or other utility lines running through or around any Unit's Private Elements

or Common Elements, if applicable An easement exists for ingress and egress and maintenance if favor of any public utility providing utility services to the Units and to each Unit Owner if necessary. Reasonable access to the individual Units and Private or Limited Common Elements as may be required in connection with the preservation of any individual Unit or Limited Common Elements in the event of an emergency, or in connection with maintenance of repairs or replacements within the Private Elements, Limited Common Elements or any equipment, facilities or fixtures affecting or serving the other Units, Private Elements and Limited Common Elements or to make any alteration required by any governmental authority

15, Alterations, Additions or Improvements. Any Unit Owner may make any alterations, additions or improvements within his Unit, Private Elements and Limited Common elements without the prior written approval of the Board, but the Unit Owner shall be responsible for any damage to other Units, the Common Elements, the Property, or any part thereof, resulting from such, alterations, additions or improvements

16. Decorating. Each Unit Owner, at such Owner's expense, shall furnish and be responsible for all decoration within such Owner's Unit and its Private and Limited Common Elements serving such Unit as may be required from time to time

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

18. Use and Occupancy Restrictions. Subject to the provisions of the By-Laws, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed and as allowed by municipal zoning laws Each Unit or any two or more adjoining Units used together shall be used as a residence or such other use permitted by this Declaration and not for other purposes except that professional and quasi-professional people may use their residence (not in violation of municipal zoning, laws) as an ancillary or secondary facility to an office established elsewhere. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from , (a) maintaining a personal professional library, (b) keeping personal business or professional records or accounts; or (c) handling personal business or professional telephone calls or correspondence. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions or municipal zoning law

19. Remedies. In the event of any violation of the provisions of the Act, Declaration, By-Laws or rules and regulations of the Board or Association by any Unit Owner (either by such Owner's conduct or by the conduct of any other Occupant of such Owner's Unit) the Association, or its successors or assigns, or the Board, or its agent, shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, By-Laws, 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 herein before, or for any combination of remedies, or for any other relief. All expenses of the Board in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of the lesser often (10% percent per annum or the maximum rate 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 shall have a lien for all of the same, as well as for nonpayment of such Owner's respective share of the common expenses upon the Unit and ownership interest in the Common Elements 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 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 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, shall have the authority to correct such default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board This paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of record on mortgage and deed of trust liens 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 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, 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 Owners 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, the By-Laws or the regulations adopted by the Board, and if such default or violation shall continue for ten (10) days after notice to the Unit Owner in writing from the Board, or shall occur repeatedly during any ten (10) day period after-such written notice or request to cure such violation from the Board, then the Board shall have the power to issue to said defaulting Owner a notice in writing terminating the rights of 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 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 such Owner on account of said violation, and ordering that all the right, title and interest of said defaulting Owner in. the Property shall be sold (subject to the lien of any existing deed of trust or mortgage) at a judicial sale upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the said defaulting Owner from reacquiring 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 attorneys' fees and all other expenses of the proceeding and sale, and any 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 Common Elements, and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purposes of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide that the purchaser shall take the interest in the Unit Ownership sold subject to this Declaration

20. Amendments. The provisions of the Declaration may be amended by an instrument in writing, setting forth, such amendment, change, modification or rescission, signed by both Unit Owners, 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

Notwithstanding the above, the Developer shall have the right to make and record any necessary amendment to this instrument for the express purpose of completion of development or as may be required to obtain FHA/VA and/or FNMA and/or FHLMC approval for the horizontal property regime.

21. **Notices.** Notices provided for in the Act, Declaration or By-Laws shall be in writing and shall he addressed to a Unit Owner, to the address of his Unit. Any Unit Owner may designate a different address for notices to such Owner 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 Owner or Owners whose Unit is subject to such mortgage to trust deed.

22. **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 or the By-Laws shall be construed as if such invalid part was never included therein

23. **Perpetuities and Restraints on Alienation.** If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the Governor of Tennessee holding office as of the date of this Declaration.

24. **Rights and Obligations.** Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration. All future Unit Owners and Occupants shall he subject to and shall comply with the provisions of this Declaration Any restrictions or rules in the By-Laws which are more than administrative in nature such as, but not limited to, reservations and future rights of 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 By-Laws appended hereto and recorded herewith, pursuant to Tennessee Code Annotated, Section 66-27-111, as they may be amended from time to time The acceptance of a deed of conveyance, devise or of a lease to a Unit, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the said 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, 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, By-Laws 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, By-Laws 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.

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

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

27. 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 By-Laws, 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 both members of the Association have agreed to such dedication, transfer, purpose, or condition, 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 shall deem necessary for the proper servicing and maintenance of the Common Elements and the individual Units.

28. Provisions Relative to Mortgagees 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 By-Laws of the Association, 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 National Mortgage Association, the Federal Home Loan Bank Board, Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") pertaining to Planned Unit Developments or condominiums, if applicable, are hereby incorporated as terms and conditions of this Declarant and By-Laws 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, 66-27-101, et seq, as such may be amended.

Specifically, without limitation upon the foregoing, the following declarations shall be fully effective and controlling over any terms of this Declaration or By-Laws which are in conflict with this paragraph, or any portions of the regulations of the Federal National Mortgage Association, The Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, pertaining to apartments and/ or regimes, are hereby deleted and the following rights of mortgagees are itemized as follows:

(a) A first mortgagee of a Unit at his request is entitled to written notification from the Association of any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under this Declaration,

By-Laws, or any of the townhome documents, which is not cured within thirty (30) days.

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

(ii) By act or omission seek to abandon the horizontal property regime 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

(iii) 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 Tennessee Code Annotated, 66-27-118, in case of substantial loss to the Units and/or Common Elements.

(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 By-Laws 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 General Common Elements, if any, which must be replaced on a periodic basis will be established and funded by regular monthly payments rather than by special assessments

(f) As set forth in Tennessee Code Annotated, 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 property as a whole

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

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

(i) Upon written request, the Association shall give to any mortgagee of a Unit the FHLMC, FNMA, any lending institution, servicing such mortgages as are acquired by the FHLMC or FNMA, 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 of the property if such loss or taking exceeds Ten Thousand and no/100 Dollars ($10,000 00), or of any other condemnation or casualty loss that affects either a material portion of the property or the Unit securing its mortgagee 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

(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, association 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) The casually and liability insurance and fidelity bond coverage required to be maintained by the Association shall meet the requirements specified in FNMA selling Guide, VIII, Chapter 7, "Insurance Requirements,"

(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"

29. **Legal Opinion.** The legal opinion required in Tennessee Code Annotated 66-27-103 has been issued and delivered to Developer.

30. **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

IN WITNESS **WHEREOF,** the undersigned has executed, this Declaration this the 31 day of Aug, 2023.

Zindan Berwary

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 Zindan Berwary, 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 purpose therein contained. _____.

Witness my hand and official seal at _____, Tennessee this the 31 day on _

Aug, 2023.

Notary Public

KASEY KELCHNER STATE OF TENNESSEE NOTARY PUBLIC RUTHERFORD COUNTY My Commission Expires 11-17-2024

Exhibit "A" Legal Description

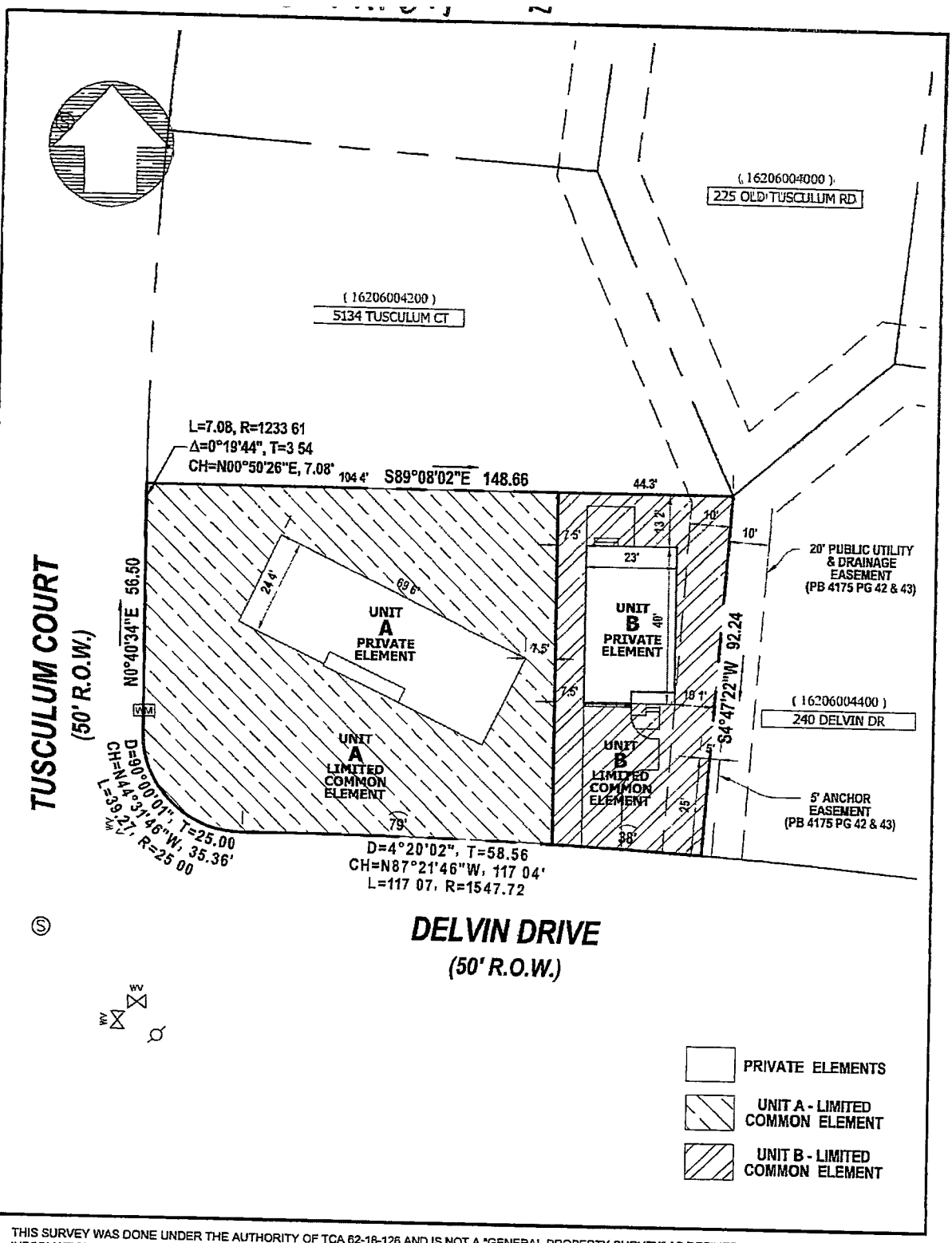
Land in Davidson County, Tennessee, Being Lot Number 67, as shown on the map entitled Section One, Fair Oaks, of record in Book 4175, Pages 42 and 43, register's Office for Davidson County, Tennessee

This Document was prepared by Advantage Title and Escrow, Inc. 1321 Murfreesboro Pike Ste. 823 Nashville, TN 37217

EXHIBIT " F"

MAINTENANCE RESPONSIBILITY-SUMMARY

	UNIT OWNER	ASSOCIATION
Air conditioner \ furnace \ water heater	X	
Kitchen appliances	X	
Water leaks (Roof, windows)	X	
Structural integrity of each unit	X	
Common Ground (not classified or limited)	X	
Driveway	X	
Front and Rear Steps	X	
Exterior doors (repairs \replacements)	X	
Interior maintenance	X	
Electrical connections and wiring	X	
Garage/carport	X	
Mailboxes	X	
Plumbing (outside wall to meter)	X	
Plumbing (interior lines)	X	
Painting (exterior - all surfaces)	X	
Patio\Balcony	X	
Roof\gutter (repair replace)	X	
Sidewalk	X	
Siding \ exterior trim (repair \ replacement)	X	
Trees (common area)	X	
Lawn mowing \tree and shrub trimming	X	
Garbage pick-up	X	
Exterior lighting	X	
Windows \sliding doors\screens\doors	X	
Anything not shown on this chart	X	



THIS SURVEY WAS DONE UNDER THE AUTHORITY OF TCA 62-18-126 AND IS NOT A "GENERAL PROPERTY SURVEY" AS DEFINED UNDER RULE 0820-3-07 THE INFORMATION SHOWN ON THIS EXHIBIT WAS DERIVED FROM RECORDED DEEDS, PLATS AND FIELD MEASUREMENTS SAID PROPERTY IS SUBJECT TO ANY FINDINGS OF AN ACCURATE TITLE SEARCH NO TITLE WORK WAS FURNISHED TO THE SURVEYOR PRIOR TO THIS EXHIBIT THIS EXHIBIT IS NOT INTENDED TO BE A BOUNDARY SURVEY OF THE PROPERTY SHOWN HEREON

JOHN C. PATTESON
REGISTERED LAND SURVEYOR
AGRICULTURE
COMMERCE
TENNESSEE NO. 1829

GRAPHIC SCALE (IN FEET)
30 0 15 30 60
1 inch = 30 ft

EXHIBIT 'B' - Units A & B
5138 Tusculum Court
NASHVILLE, TENNESSEE
Metro Parcel ID: (16206004300)

CLINT ELLIOTT SURVEY
P.O. Box 331875
Nashville, TN 37203
clintelliottsurvey.com
(615) 490-3236

Drafted By: CH

Exhibit "C"
To
Declaration

BYLAWS

OF

The Cottages at 5138 TUSCULUM COURT

ARTICLE I

Members (Unit Owners)

Section 1. Eligibility. The members of **The Cottages at 5138 Tusculum Court Owner's Association**, a Tennessee not-for-profit association, shall consist of the respective Unit Owners of **The Cottages at 5138 Tusculum Court Owner's Association,** (the "Property"). If a Unit Owner is a trust, then the member shall be the beneficiary of such trust, and if a Unit Owner or such beneficiary is a corporation or partnership, the member may be an officer, partner or employee of such Unit Owner or beneficiary.

Section 2. Succession. The membership of each Unit Owner shall terminate when such member ceases to be a Unit Owner, and upon the sale, transfer or other disposition of such Owner's ownership interest in the Property, such Owner's 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 annual meeting of Unit Owners (the "First Meeting" may be held, subject to the term 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 meetings of the Unit Owners may be called by the President or by any Unit Owner. Said special meetings shall be called by delivering written notice to all Unit Owners not less than ten (10) days prior to the date of said meeting, stating the date, time and place of said special meeting and the matters to be considered

Section 5. Delivery of Notice of Meetings. Notice of meetings may be delivered either personally or by mail to a Unit Owner at the address given to the Board by said Unit Owner for such purpose, or to the Unit Owner's Unit, if no 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 (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

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 at least two (2) members (hereinafter referred to as "directors

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

Section 3. Vacancies. Any vacancy occurring in the Board shall be filled by the remaining members thereof. Any director so elected, to fill a vacancy shall hold office for a term equal to the unexpired term of the previous director succeeded.

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 a call by the President of by a majority of the Board on not less than forty-eight (48) hours' notice in writing to each director, delivered personally or by mail or telegram. Any director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Board without a meeting. A director's attendance at a meeting shall constitute 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 appointed by the 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 of the 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 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 therefor, 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 the 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, annually to review 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,

(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. 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 the Unit Owners.

Section 10. Power to Take Any Action. Wherever 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.

ARTICLE III

Officers

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

(a) The President, who shall be a director and who shall preside over the meetings of the Board and of the 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 the 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 the-successor thereof 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 of the officer succeeded Any officer may be removed for cause at any time by vote of two-thirds of the total members 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 the 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

Secton 2. Lien. 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 maintain a suit to foreclose any such lien, and there shall be added to the amount due the costs of any suit and other fees and expenses, together with legal interest and reasonable attorneys' fees to be fixed by the Court, Furthermore., If any Unit Owner shall fail or refuse to pay when due such Owner's 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 the receipts and 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 encumbrance which in the opinion of the Board may constitute a lien against the property of the Common Elements, rather than a lien against only a particular Unit. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason of such lien.

ARTICLE V

Use and Occupancy Restrictions

Section 1. General. Each Unit Owner shall maintain such Owner's Unit in good condition and in good order and repair, at such Owner's own expense.

Section 2. Storage. Storage of boats, trailers, campers, and motor homes on the Property shall not be permitted.

Section 3. Patios. All patios and decks shall be maintained by the owner to which area is assigned and shall be designated as a Private Element

ARTICLE VI

Amendments

These Bylaws may be amended or modified from time to time by action or approval of all of the Unit Owners Such amendments shall be recorded in the office of the Register of Deeds of **Davidson**. County, Tennessee,

ARTICLE VII

Indemnification

Section 1. General. The Association shall indemnify and hold harmless each of its directors and officers, each member of any committee appointed pursuant to the Bylaws of the Association, against all contractual and other liabilities to others arising out of contracts made by or other acts of such Directors, officers, committee members on behalf of the Unit Owners, or arising out of their status as Directors, officers, 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 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 other, 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, 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 duties as such director, officer, 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 persons being adjudged liable for gross negligence or fraud in the performance of 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 the By-Laws of the Association 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 person shall be indemnified against expenses (including attorneys' fees) actually and reasonably 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 person or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Association as authorized in this Article VIII.

ARTICLE VIII

Mortgages

Section 1. Notice to Board. A Unit Owner who mortgages such Owner's Unit shall notify the Board of the name and address of the mortgagee and shall file a 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 Common Charges. The Board, whenever so requested in writing by a mortgagee of a Unit, shall promptly report any then unpaid common 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 common 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 theretofore been furnished to the Board

Section 4. Examination of Books. Each Unit Owner shall be permitted to examine the books and records of the Association during normal business hours and upon request

Section 5. Interest of Valid First Mortgage The interest of a valid first mortgage 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 mortgage had incorporated the terms of these By-Laws, the Declaration and the contract in its deed of trust, then said first mortgage may at its option declare a default in its deed of trust by reason of any default hereunder, any may proceed to enforce its rights according to the terms of the deed of trust notwithstanding any enforcement instituted by the Board.

ARTICLE IX

Definition of Terms

The terms used in these By-Laws, to the extend they are defined herein, shall have the same definition as set forth in the Declaration known as "**The Cottages at 5138 Tusculum Court** as such may be amended from time to time, in the Office of the Register of Deeds of **Davidson** County, TN.

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

ARTICLE X

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 case any of the By-Laws conflict with the provisions of said Statute of the Declaration, the provisions of said statute or of the Declaration, as the case may be, shall control.

The undersigned hereby certifies that the foregoing By-Laws were duly adopted as the By-Laws of **The Cottages at 5138 Tusculum Court Owner's Association.**

Dated this 31 day of Aug 2023.

Declarant: Zindan Berwary

State of Tennessee
County of Davidson

Personally appeared before me, the undersigned, a Notary Public on and for said County and State, the within named Zindan Berwary 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 purpose therein contained

Witness my hand and official seal at Nashville, Tennessee this 31, day Aug, 2023.

Notary Public

KASEY KELCHNER
STATE OF TENNESSEE
NOTARY PUBLIC
RUTHERFORD COUNTY
My Commission Expires 11-1-2025