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THIS INSTRUMENT PREPARED BY: Jennifer S. Dunlap, Attorney
7101 Executive Center Drive, Suite 151
Brentwood, TN 37027

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BENHAM COMMONS

This Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Declaration"), set forth and entered into this the 17th day of May, 2007, by Nashville Construction Company, Inc. (hereinafter referred to as the "Declarant") with reference to the following facts:

WITNESSETH

WHEREAS, Declarant is the owner of certain real property (hereinafter referred to as the "Property") known as Benham Commons, located in the City of Nashville, Davidson County, Tennessee, of record under Instrument No. 20060202-0012880, Register of Deeds for Davidson County, Tennessee, to which reference is hereby made for a more complete description; and

WHEREAS, Declarant desires to establish a planned unit development as provided in Section 66-27-103(b) of the Tennessee Code Annotated (hereinafter referred to as the "Act"), as amended, and thereby to cause a planned unit development to be properly organized and development under Tennessee law, pursuant to the Act, as amended; and

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and shall run with the real property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

"Association" shall refer to Benham Commons Homeowners' Association, Inc., a mutual benefit, not-for-profit corporation, organized and existing under the laws of the State of Tennessee.

"Board" means the Board of Directors of Benham Commons Homeowners' Association, Inc.

"By-Laws" means the By-Laws of Benham Commons Homeowners' Association, Inc., attached hereto as Exhibit "B" and made a part hereof, as amended from time to time.

"Owner" shall refer to the record owner whether one or more person or entity, of a fee simple title to any lot which is a part of the "Property", including contract seller(s), but excluding those having such interest merely as security for the performance of an obligation.

"Limited Common Elements" means all Common Elements, contiguous to and serving exclusively a single Unit as depicted on the Plat, 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 the Board.

"Common Area" or "Common Elements" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

"Unit" means the freestanding improvements as shown on the Plat, which separate buildings are not owned in common with the Owners of other Units. Each Unit is numbered as shown on the Plat, and the boundaries of each Unit as shown thereon.

"Member" shall mean and refer to every person or entity that holds membership in the Association.

""Building" means the building or buildings located on the Property and containing Units. The "Building" is delineated on the Plat. When more than one building is shown on the Plat (or an amended survey), the word "Building" shall be used in the plural context.

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

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

"Plat" means the surveyor's representations of the Property prepared by _____, and recorded as Exhibit "A" hereto, showing the number of each Unit, and expressing its area, location and other data necessary for identification.

"Majority" or "majority of the Unit Owners" means the Owners of more than fifty percent (50%) of the membership in the Association, present and then eligible to vote, Any specific percentage of Unit Owners means that percentage of Unit Owners who in the aggregate own such specified percentage of the entire membership in the Association, present and then eligible to vote.

"Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area and dedicated streets.

"Act" shall mean the Tennessee Horizontal Property Act, as amended (Chapter 27 of Title 66 of Tennessee Code Annotated). All definitions contained in the Act shall be deemed to be definitions for purposes of this Declaration, including the definition of "Private Elements" and "Corporation".

"Private Elements" means and includes the area upon which a Unit is located as shown on the Plat as being the Private Elements designated for each Unit depicted thereon for which fee simple ownership and exclusive use is reserved to that Unit only.

"Attorney's Opinion" shall mean that Attorney's Certificate attached at Exhibit "C", which opinion is obtained for purposes of Tennessee Code Annotated Section 66-27-103(b), which Attorney's Certificate reference to the attached certificate of a professional engineer or architect by T.C.A. Section 66-27-104, for the purposes therein contained.

ARTICLE II
UNITS

Section 1. Description. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on the Plat. Every deed, lease, mortgage, deed of trust or other instrument shall legally described 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. No Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on the survey.

Section 2. Mortgages and Deeds of Trust. Each Owner shall have the right, subject to the provisions contained herein, to make separate mortgages and deeds of trust for his respective Unit together with his respective ownership interest in the Association. No 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 his own Unit and the respective percentage interest in the Association corresponding thereto.

ARTICLE III
ASSOCIATION OF OWNERS AND ADMINISTRATION AND OPERATION OF THE PROPERTY

Section 1. (a) Formation. There has been or will be formed an Association having the name Benham Commons Homeowners' Association, Inc., a Tennessee corporation, which Association shall be the governing body for all of the Owners, for the maintenance, repair, replacement, administration and operation of the Property, this Declaration and the By-Laws. The By-Laws for the Association shall be the By-Laws attached to the Declaration as Exhibit "B" 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 By-Laws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be held and applied by it for the use and benefit of Owners in accordance with the provisions of the Declaration and By-Laws. Each Owner shall be a member of the Association so long as he is an Owner. An Owner's membership shall automatically terminate with he ceases to be an Owner. Upon the conveyance or transfer of an Owner's ownership interest to a new Owner, the new Owner shall simultaneously succeed to the former Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be equal to two. Each Owner's respective percentage of ownership interests in the Association shall be fifty percent (50%).

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

Section 2. Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property, or any questions or interpretation of application of the provision of this Declaration or By-Laws, the determination thereof by the Board shall be final and binding on each and all such Owners.

Section 3. Ownership of the Association. Each Owner shall be entitled to fifty percent (50%) of the ownership in the Association, as set out in Section 1(a) hereof. The percentage of the ownership interests shall remain constant unless amended pursuant to the reservation set forth herein, or unless hereafter changed by recorded amendment to this Declaration as provided for herein or consented to in writing by the necessary Owners and first mortgagees. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in the Association corresponding to said Unit. The ownership in the Association corresponding to any Unit shall be appurtenant to the ownership of the Unit and 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.

Section 4. Use of the Common Elements. Each Owner shall have the right to use the Common Elements (except the Limited Common Elements) in common with all other 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 Owner. Such right to use the Common Elements shall extend to not only each Owner, but also to the agents, servants, tenants, family members, customers, invitees and licensees. However, each Unit Owner shall have the right to exclusive use and possession of the Limited Common Elements contiguous to and serving such Unit alone. Such rights to use the Common Elements, including the Limited Common Elements, shall be subject to and governed by the provisions of this Declaration, By-Laws and rules and regulations of the Association. In addition, the Association shall have the authority to lease, grant, concessions or grant easements with respect to parts of the Common Elements, subject to the provisions of this Declaration or By-Laws. All income derived by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

Section 5. Common Expenses. Each Owner shall pay his proportionate share of the expenses of the administration and operation of the Common Elements, if any, and of any other expenses incurred in conformance with this Declaration and the By-Laws (which expenses are herein sometimes referred to as "common expense"), including, but not limited to, the maintenance and repair thereof and any and all replacements additions thereto. Such proportionate share of the common expenses for each Owner shall be in accordance with his percentage of ownership in the Association. Payment of common expenses shall be in such amounts and such times as determined in the manner provided in the By-Laws. No Owner shall be exempt from payment of his proportionate share of the common expenses by waiver or non-use of the Common Elements or by abandonment of his Unit. If any Owner shall fail or refuse to may any such payment of the common expense when due in advance by the 15th day after due date as established by the Board, then (i) a late charge of $25.00 for each month thereafter that such payment has not been made or (ii) the Board may, by resolution or rule, increase the said late payment charge to a reasonable amount, considering the time and circumstances involved. The Board's decision as to reasonableness shall be binding upon all parties, and such payment, together with such late payment charge, shall constitute a lien on the interest of such Owner in the Property.

ARTICLE IV
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) the right of the Association (acting by and through the Board) to suspend the voting rights of an Owner for any period during which any assessment against his Unit remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(b) the right of the Association (acting by and through the Board) to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by all of the Members, agreeing to such dedication or transfer, has been recorded, providing, however, that such consent shall not be required for the dedication of utility or service easements;

(c) the right of the Association (acting by the Board) to grant private access and/or private utility or drainage easements to private individuals or entities to serve neighboring properties.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Area and facilities to the members of his family and/or tenants. Membership in the Association may not be conveyed separate from ownership in the Unit.

Section 3. Association's Right of Entry. The authorized representatives of the Association or the Board, shall be entitled to reasonable access to the individual Units as may be required to correct any existing violation of the provisions of this Declaration, or in connection with the preservation of any individual Unit or in the event of any emergency, or in connection with maintenance of, repairs or replacements within the Units or Common Elements, or any equipment facilities or fixtures affecting or serving the other Units or Common Elements, or to make any alteration required by any governmental authority.

ARTICLE V
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Unit owned within the Property, hereby covenants, and each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) annual assessments or charges, and

(b) special assessment for capital improvements, if any, which may be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which the assessment is made. This lien provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien or liens provided for in this section. Each assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person or entity that was the Owner of such property at the time which assessment becomes due. The personal obligation for delinquent assessments shall not pass to their respective successor(s) in interest unless expressly assumed by such successors in interest. All property dedicated to or accepted by a local public authority shall not be subject to the assessments provided for in this Section.

Section 2. Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property, and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose, or for the use and enjoyment of the Common Area, if any, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, if any, the procurement and maintenance of insurance, if necessary, in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, payment of common expenses and such other needs as they may arise.

Section 3. Rate and Payment of Annual Assessment. The Board of Directors shall fix the payable annual assessment fixed at a uniform rate for all Units and may be collected on a monthly basis. The books and records for the Association will be kept in such a manner that it is possible to determine and ascertain (i) such sums as are expended by the Association for development, improvement, maintenance and upkeep of all recreational facilities of the Association, and (ii) such sums as are expended for other purposes.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, the Association (acting by and through the Board) may levy, in any calendar year, a special assessment applicable to that year only for the purposes of defraying in whole or in part, the costs of any construction, reconstruction repair or replacement of a capital improvement upon the Common Area, if any, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of all of the Members, or for any common expense approved by the Board of Directors. All special assessments shall be fixed at a uniform rate for all Units and may be collected on a monthly basis, without additional fee or cost to such members paying on a monthly basis.

Section 5. Date and Commencement of Annual Assessments; Due Dates. The annual assessments and subsequent due dates provided for herein shall commence as to all Units on a date which shall be established by the Board of Directors. Written notice of such assessment shall be sent to every Owner at least thirty (30) days in advance of each annual assessment period.

Section 6. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within fifteen (15) days after due date shall bear interest from the due date at the then maximum applicable formula rate of interest legally chargeable under Title 47, Chapter 14, Sections 101 et seq., Tennessee Code Annotated, as it may be amended from time to time, on a per annum basis until reinstatement or the completion of foreclosure. The Association may bring an action against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessments. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Areas, if any, or abandonment of his Unit.

ARTICLE VI
MAINTENANCE, REPAIRS AND REPLACEMENTS

Each Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within and to his Unit and the Limited Common Element exclusively serving his Unit or the Board may cause the same to be done at the expense of the Owner. Maintenance of, repairs to and replacements to the Common Elements, if any, except those referred to in the preceding sentence, shall be the responsibility of and shall be furnished by the Association. All Limited Common Elements including decks, patios and backyards shall be the maintenance, repair and replacement responsibility of the individual Owner to which they attach.

If, due to the act or neglect of Owner, or of his agent, servant, tenant, family member, invitee, licensee or household pet, damage shall be caused to the Common Elements, if any, or to a Unit owned by another, and maintenance, repair or replacement are required which would otherwise be a common expense, then such 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 or the Board shall be entitled to reasonable access to the individual Units as may be required in connection with the preservation of any individual Unit in the event of an emergency, or in connection with maintenance of, repairs to or replacements within the Common Elements or any equipment, facilities or fixtures affecting or serving other Units and the Common Elements or to make any alteration required by any governmental authority.

ARTICLE VII
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the construction of the homes upon the Property and placed on the dividing line between Units shall constitute a party wall, and to the extent to which it is inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence, or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners of the Property.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and require contribution toward restoration from any other Owner. The right of any Owner to contribution from any Owner under this provision shall be appurtenant to the land and shall pass to such Owner's respective successor(s) in interest.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Disputes. Any dispute arising concerning a party wall, or under the provisions of this Article, shall be settled in accordance with Article XIII, Section 1, Enforcement.

ARTICLE VIII
INSURANCE

Section 1. Insurance required by the Association.

(a) Casualty Insurance on Insurable Area. The Association shall keep all insurable improvements and fixtures of the Common Area, if any, insured against loss or damage by fire for the full insurance replacements cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal owned by the Association, against loss or damage by fire and

such other hazard as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be payable to the Association. The Association shall use insurance proceeds for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carrier by the Association are common expenses included in the assessments made by the Association.

(b) General Liability and Other Insurance. The Association 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 Owner, mortgagee of record, if any, the Association, its officers, directors, Board and employees from liability in connection with the Common Elements, if any. The premiums for such insurance shall be a common expense. However, at the option of the Board, and upon written notice to all Owners, premiums for such insurance shall be separately billed to each Owner for his corresponding percentage of ownership in the Association.

Section 2. Owner's Insurance Obligations. Each Owner shall be responsible for obtaining his own insurance on his Unit, the contents of his Unit and the Limited Common Element serving his Unit, as well as his additions and improvements thereto, decorating, furnishings and personal property therein, and personal property stored elsewhere on the Property. The insurance policy shall afford as a minimum protection against the following:

(a) loss or damage by fire or other perils normally covered by the standard extended coverage;

(b) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

This policy shall be in an amount equal to 100% of current replacement cost of the Unit, exclusive of land, foundation, excavation and other items normally excluded from coverage. All policies shall contain or have attached thereto a "standard" or "union" mortgage clause (without contribution) in the form customarily used in Tennessee.

Section 3. Annual Review of Policies. All insurance policies shall be reviewed at the least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient.

Section 4. Notice to First Mortgagees. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, the institutional holder of any first deed of trust or mortgage on a Unit will be entitled to timely written notice of any such damage or destruction and no provision of any document establishing the Property will entitle the Owner of a Unit or other party to priority over such institutional holder with respect to the distribution of any insurance proceeds.

Section 5. Notice of Cancellation or Modification. Policies may not be canceled or substantially modified without at least 10 days' prior written notice to the Association and to each holder of a first deed of trust or mortgage which is listed as such on the insurance policy.

ARTICLE IX
EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat.

ARTICLE X
ALTERATIONS, ADDITIONS OR IMPROVEMENTS

Section 1. Exterior. Any Owner shall have the right to make such alterations, additions or improvements to the exterior of his Unit or the Limited Common Element serving his unit, including without limitation fencing, landscaping, provided such alterations, additions or improvements which do not conflict with the general architectural design or color schemes of the Property and the other Buildings.

Section 2. Decorating. Each Owner, at his own expense, shall furnish and be responsible for all decorating within his Unit and the Limited Common Element serving same as may be required from time to time, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, lighting and other interior furnishings and fixtures. Each Owner shall be entitled to the exclusive use of the interior surface of the perimeter walls, floor and ceilings of his Unit, and such Owner shall maintain said interior surfaces in good condition at his sole expense. Said maintenance and use of interior surfaces shall be subject to the rules and regulations of the Association, but each such Owner shall have the right to decorate such interior surfaces as he may see fit and at his sole expense.

ARTICLE XI
TRANSFER OF UNIT - NOTICE TO ASSOCIATION

Subject to the provisions of this Declaration, an Owner may sell, give, devise lease or otherwise transfer his Unit or any interest therein, to any person or entity. Any Owner who wishes to make a transfer must notify the Association in writing at least ten (10) days prior to transfer.

ARTICLE XII
REMEDIES

In the event of any violation of the provisions of this Declaration, By-Laws or rules and regulations of the Board or Association by an Owner (either by his own conduct or by the conduct or any other occupant of his Unit) the Association, or its successors or assigns, or the board, or its agent, shall have all of the rights and remedies which may be provided for in this Declaration, By-Laws or said rules and regulations, or action or other proceedings against such defaulting Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereinabove and as provided hereinafter, 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 then maximum applicable formula rate of interest legally chargeable under Title 47, Chapter 14, Sections 101 et seq., Tennessee Code Annotated, as it may be amended from time to time, on a per annum basis until reinstatement or the completion of foreclosure or at the then highest contract rate of interest then legally collectible in Tennessee, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective share of the common expenses, upon the Unit and ownership interest in this Association of such defaulting Owner and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property. Such lien shall be subordinate to the lien of a recorded first deed of trust or mortgage on the interest of such 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 deed of trust or mortgage owner or holder accepts a conveyance of any interest therein (other than as security) or forecloses the lien of its mortgage or deed of trust. In the event of any such default by any Owner, 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 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.

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 Owner for such entry) upon the Unit or any portion of the property as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting 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 Owner for such entry) of such Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law.

If any Owner (either by his own conduct or by the conduct of any other occupant of his Unit) shall violate any of the covenants, restrictions or provisions of this Declaration or the rules and regulations adopted by the Board, and if such default or violation 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 said defaulting Owner to continue as an Owner and to continue to occupy, use or control his Unit, and thereupon an action in equity may be filed by the Board against said defaulting Owner for a decree of mandatory injunction against such defaulting Owner or Occupant, or in the alternative, for a decree declaring the termination of said defaulting Owner's right to occupy use or control the Unit owned by him on account of said violation, and ordering that all the right, title and interest of said defaulting Owner, 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 Unit shall be sold (subject to the lien of any existing deed of trust or mortgage) at a judicial sale upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the said defaulting Owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against said 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 Owner's corresponding percentage of ownership in the Association, and to immediate possession of the Unit 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 subject to this Declaration. An aggrieved Owner or first mortgagee may bring an action at law or in equity to require the enforcement of this Declaration and the By-Laws by the Board, or may bring an action to enjoin or specifically require a party to perform what is required of him or it hereunder.

As one of its remedies, in the event the Board finds that there is excessive noise in a Unit which it characterizes to be a nuisance, the Board may require that walls and/or floors between the Unit wherein the excessive noise originates and adjacent Units be insulated and maintained at the sole cost of the Owner of the Unit wherein the excessive noise originates. The Board may cause such insulation to be installed at the expense of said Owner and without the consent of the said Owner and work may be done on or about such Unit wherein the excessive noise has originated, as an easement through and over the Unit of the offending Owner for such purpose.

ARTICLE XIII
GENERAL PROVISIONS

Section 1. Enforcement. The provisions of this Declaration are declared to create mutual, equitable covenants and servitudes for the benefit of Declarant, each Owner and their respective successors in interest. Any controversy or claim arising out of or relating to this Declaration may be settled by arbitration in accordance with the rules of the American Arbitration Association, or by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction either to restrain violation and/or to recover all costs and damages suffered by the enforcing party as a result of such violation, including all costs and attorney's or other professional fees incurred by the enforcing party to prevent or correct the violation. Failure of Declarant or any Owner to enforce any covenant, condition or restriction, or exercise any rights herein contained shall in no event be deemed a waiver of the right to do so thereafter. All costs incurred in enforcement (including attorney's fees and court costs) shall be at the expense of the violator or violators.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any of the other covenants, conditions or restrictions or other provisions contained in this Declaration which shall remain in full force and effect.

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.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind with the land for a term of thirty (30) years from the date this Declaration is recorded, unless a subsequent Amendment extends the termination date. This Declaration may be amended only by an affirmative vote of the Owners and further, this amendment provision shall not be amended to allow any amendment if all Owners do not concur. The foregoing to the contrary notwithstanding, Declarant may amend this Declaration without the approval of any Owners provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's lot as set forth in this Declaration and the amendment does not adversely affect the title to any Unit. The Amendment shall be effective upon recording of such instrument in the Register's Office for Davidson County, Tennessee.

Section 4. Encroachment. It is understood that Units that adjoin each other and have a party wall built as a part of the construction of the homes which are placed upon the Private Element dividing line between adjoining Units may encroach on such adjoining Units due to construction or other reasons. Accordingly, an easement is reserved for such encroachments as are contained in the buildings, whether the same now exist or may be caused or created by construction, settlement, or movement of the building, or by permissible repairs, construction or alteration. With regard to any differences that may exist on the survey and the actual party walls and Private Element lines that exist on the Property, the Private Element lines and party walls that actually exist shall control over discrepancies in the survey.

Section 5. Restrictions on Use of Units.

(a) Each of the Units shall be used for residential purposes only and for no other purpose.

(b) No nuisances or unlawful activity shall be allowed on the Property nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or interferes with the quiet enjoyment of occupants of the Units.

(c) Each Owner shall maintain his Unit in good condition and good order and repair, at his own expense, and shall not permit anything to be done which would result in the cancellation of insurance on any other residence or which would be in violation of any law.

Section 6. Notices. Notices provided for in this Declaration or By-Laws shall be in writing, and shall be addressed to the Association or Board, or any Unit Owner, as the case may be, at their respective addresses on Benham Avenue, Nashville, Tennessee, or at such other address as hereinafter provided.

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

Section 7. Rights and Obligations. Each Grantee of the Declarant, by the acceptance of a deed of conveyance accepts the same subject to all restrictions, conditions, covenants, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration. All future Owners, tenants and occupants shall be subject to and shall comply with the provisions of this Declaration. All rights, benefits, and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land and shall inure to the benefit of such grantee in like manner as though 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 Owners and occupants of a Unit shall be subject to, and shall comply with, the provisions of the By-Laws appended hereto and recorded herewith. The acceptance of a deed of conveyance 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, as assumed, accepted and ratified by such 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 of conveyance or lease.

Section 8. Real Estate Taxes. Real estate taxes shall be separately taxed to each Owner for his Unit, Limited Common Element serving his Unit and his corresponding percentage of ownership in the Association. In the event that such taxes for any year are not separately taxed to each Owner, but rather taxes to the Property as a whole, then each Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Association.

Section 9. Condemnation. In the event of a taking in condemnation or by eminent domain of a part of the Common Elements, if any, or Unit, the award made for such taking shall be payable to the Board for and on behalf of the Association and/or the Owners directly affected thereby, as their interest may appear. If a majority of the Board in their sole and absolute discretion approve the repair and restoration of such Unit(s) or Common Elements, the Board shall arrange for the repair and restoration of such Unit(s) or 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 does not approve the repair and commence restoration of such Unit(s) or Common Elements within 120 days after the taking by the public or private authority, the Board shall disburse the net proceeds of such award on a fair and reasonable basis to the mortgagees directly affected by the condemnation and the balance to the Owners directly affected. The decision of the Board as to fairness and reasonableness shall be binding upon all parties.

If any Unit or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding, then the institutional holder or any first deed of trust or mortgage on a Unit will be entitled to timely written notice of any such proceedings or proposed acquisition and no provision of any document establishing the Property will entitle Owner or other party to priority over such institutional holder with respect to the distribution to such Unit of the proceeds of any award or settlement.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this Declaration as of the date first above set forth.

Declarant

NASHVILLE CONSTRUCTION COMPANY, INC.

By:_____
William E. Edwards, III, President

STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

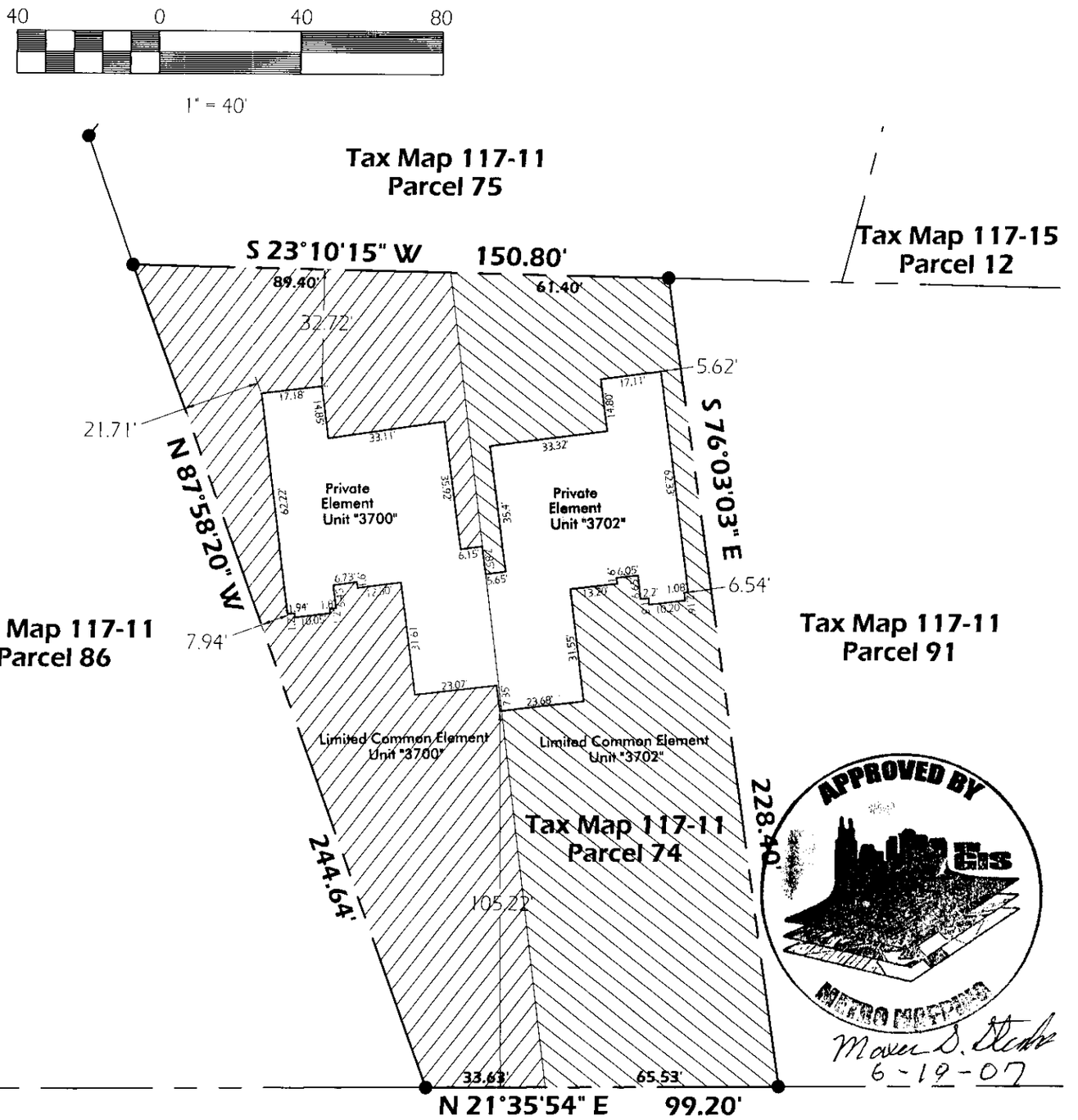
Before me, the undersigned, of the state and county aforesaid, personally appeared William E. Edwards, III, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Nashville Construction Company, Inc., the within named bargainor, a corporation, and that he as such President, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

WITNESS my hand, at office, this 17 day of May, 2007.

NOTARY PUBLIC

My Commission Expires: 9/19/09

JENNIFER S. DUNLAP
NOTARY PUBLIC
STATE OF TENNESSEE
DAVIDSON COUNTY



Benham Avenue

This Property is not included in a Special Flood Hazard Area
by Maps available to this office. Map # 47037C0356F Date:04/20/01

Condominium Exhibit
Benham Commons

Owner : Nashville Construction Company
Address : 3700 Benham Avenue
City: Nashville, Davidson County, Tennessee
Tax Map : 117-11 - Parcel : 74
Instrument # : 200602020012880
Date : 06/15/07
Area : 28,432 S.F. / 0.653 Acres

NORTH

JOB # 05181

STEVEN D. DELLE
REGISTERED LAND SURVEYOR
XVI
AGRICULTURE
COMMERCE
TENNESSEE NO. 1710

DRAWN BY: MWF

DLS
Delle Land Surveying
408 Nesbitt Lane Madison, TN 37115
(615) 865-4242

EXHIBIT "B"

BY-LAWS
OF
BENHAM COMMONS HOMEOWNERS' ASSOCIATION, INC.,

These By-Laws shall regulate the business and affairs of the Corporation, subject to the provisions of the Corporation's Charter and any applicable provisions of the Tennessee Nonprofit Corporation Act, Section 48-51-101 et seq., Tennessee Code Annotated, et seq. (the "Act").

ARTICLE I
Members (Unit Owners)

Section 1. **Eligibility.** The members of Benham Commons Homeowners' Association, Inc.,, a Tennessee not-for-profit corporation, shall consist of the Unit Owners of the property now known as Benham Commons 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 beneficiary is a corporation or partnership, the member may be an officer, partner or employee of such Unit Owner or beneficiary.

Section 2. **Secession.** 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 al Unit Owners at least ten (10) days prior to the date of such meeting.

Section 4. **Special Meetings.** Special meetings of Unit Owners may be called by a majority of the Unit Owners. Special meetings shall be called by delivering written notice to al 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 assessment 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 shall consist of three (3) members (hereinafter referred to as "Directors"). Every Director, except for members of the First Board, shall hold office for a term of three (3) years and until a successor shall be elected and qualified.

Section 2. **Qualifications.** Two (2) Directors shall consist of one (1) Director being each Unit Owner or spouse of each Unit Owner. A 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 assume transferor's position as 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 by the President or by a majority of the Board on not less than forty-eight (48) hours' notice in writing to each Director, delivered personally or by mail or telegram. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Board without a meeting.

Section 5. **Removal.** Any non-Unit Owner Director may be removed from office with or without cause by the vote of a majority of 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 the Managing Agent;
g) To provide for the designation, hiring and removal of employees and other personnel, including accountants or 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, annually to review the amounts of such coverage afforded by such policies;
m) Unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of the 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 Associaion 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.** 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 (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 office 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 takes, 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. **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 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 responsible 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 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 in the 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 it 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, 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 the 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 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 (1) 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 (2) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is no reasonable ground for such person's being adjudicated 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 Section1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably 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 rising, 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, officer, 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 many 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 that Board, officer of the Association, or a member of such committee, and shall insure 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 the 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 charged 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 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 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 for Benham Commons, which are being recorded simultaneously herewith.

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

ARTICLE XI
Conflicts

The 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.

EXHIBIT "D"

TO

BIRDHAVEN TOWNHOMES A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

ATTORNEY'S CERTIFICATE

This document is intended to serve as the attorney's opinion which is required under the terms of Tennessee Code Annotated, Section 66-27-103. The undersigned, Jennifer S. Dunlap, an attorney licensed to practice law in the State of Tennessee, hereby declares that the general contractor for construction of Units A and B shown on the plan for Benham Commons is Nashville Construction Company, Inc., a licensed contractor in the State of Tennessee. All improvements are in substantial compliance with local building codes and that upon proper recording of this certificate and the following additional documents, all legal requirements for the creation of a Horizontal Property Regime development under the terms of the Tennessee Horizontal Property Act, Tennessee Code Annotated, Section 66-27-101 et. seq., have been met:

1) The Declaration of Covenants, Conditions and Restrictions for Benham Commons, a Horizontal Property Regime with Private Elements, as herein amended.

2) By-Laws of Benham Commons Homeowners' Association, Inc., (a townhouse corporation), as herein amended.

3) The plat for Benham Commons, a Horizontal Property Regime, which plat shows private and common elements (if applicable).

4) The charter of Benham Commons Homeowners' Association, Inc., (a townhouse corporation).

Witness my hand this 21st day of ~~May~~ June, 2007.

Jennifer S. Dunlap