

BA 9344

RETURN TO: GRIFFIN, CLIFT & BURNS
6385 Stage Road
Bartlett, TN 38134

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BIRDSONG ESTATES SUBDIVISION
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, Made this 15th day of May,
1989, by DEWEY G. PRICE, JR., Developer and Owner, hereinafter
referred to individually and/or collectively as "Declarant" or
"Developer";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property in
the City of Memphis, County of Shelby, State of Tennessee, which
is more particularly described in "Exhibit A" attached hereto and
made a part hereof; and

WHEREAS, Declarant desires to provide for the preservation
and maintenance of the values and amenities in Birdsong Estates
Subdivision, and to this end desires to subject the real estate
described in "Exhibit A" to the covenants, conditions,
restrictions, easements, charges and liens hereinafter set forth,
each and all of which is and are for the benefit of said property
and each owner thereof; and

WHEREAS, Declarant has deemed it desirable to operate an
agency to which should be delegated and assigned the powers of
maintaining, administering and entering the covenants and
restrictions and collecting and disbursing the assessments and
charges hereinafter created for the efficient preservation and
maintenance of the values and amenities of the property; and

WHEREAS, Declarant will cause to be incorporated under the
laws of the State of Tennessee as a non-profit, non-stock
corporation, Birdsong Estates Homeowners Association, Inc., for
the purpose of exercising the function aforesaid;

NOW, THEREFORE, Declarant hereby declares that all of the
real property described on "Exhibit A" shall be held,
transferred, sold, conveyed, hypothecated or encumbered, used and
occupied, subject to the covenants, restrictions, easements,
charges and liens (hereinafter sometimes referred to as
"Covenants and Restrictions") hereinafter set forth:

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ARTICLE I

DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

Section 1. "Association" shall mean and refer to BIRDSONG ESTATES HOMEOWNERS ASSOCIATION, INC., a Tennessee non-profit corporation, its successors and assigns, the Charter and By-Laws of which, along with this Declaration shall govern the administration of the property. Said Charter and By-Laws being attached hereto and made a part hereof as "Exhibit B" and "Exhibit C", respectively.

Section 2. "Board of Directors" shall mean and refer to the governing body of the Association.

Section 3. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, together with any supplement or amendment hereto recorded in the Register's Office of Shelby County, Tennessee.

Section 4. "Common area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the members of the Association. Said Common Area is identified on the Birdsong Estates Subdivision Plat as Lot 84 and the improvements thereon, and the common landscape easements, parts of Lots 52, 83 and 85, as set forth in said Plat.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation, provided, however, that the purchaser at a foreclosure sale or Trustee's sale shall be deemed an Owner.

Section 7. "Declarant" shall mean and refer to DEWEY G. PRICE, JR.

Section 8. "Lot" shall mean and refer to a Lot shown on the plat filed in Plat Book 126, Page 66, in the Register's Office of Shelby County, Tennessee, and all amendments and recordings

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thereof, and improvements on said Lot(s). Conveyance of Lot(s) may be by metes and bounds description or by Lot number. Ownership of a Lot hereunder shall include an undivided pro rata interest in the Common Area owned by the Association.

Section 9. "Property" shall mean and refer to that certain real property described in "Exhibit A" attached hereto.

ARTICLE II

ROADS AND SEWERS

The private drive and the storm and sanitary sewers within Birdsong Estates have been dedicated to the City of Bartlett.

ARTICLE III

MEMBERSHIP

The following sections of this Article III shall apply to the membership in the Association.

Section 1. Member(s). The Declarant and every owner of a Lot which is subject to assessment by the Association shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an ownership merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

ARTICLE IV

VOTING RIGHTS AND CLASSIFICATION OF MEMBERS

Members shall be divided into two classes denominated as Class A Members and Class B Members, defined as follows:

Class A Members shall be all Owners as defined in Article I, with the exception of Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article I. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B Member(s) shall be the Declarant, who shall be entitled to six (6) votes for each Lot in which it holds the interest required for membership by Article I. The Class B

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membership shall cease and be converted to Class A membership upon the first to occur of the following: (a) Fifty percent (50%) of the lots are sold to Owners; or (b) three (3) years from the date of recording of this Declaration, whichever comes first. From and after the happening of these events, whichever occurs first, the Class B Member(s) shall be deemed to be Class A Member(s) entitled to one vote for each Lot in which it holds the interest required for membership.

The Association membership shall hold an organizational meeting at the call of the Declarant. The organizational meeting of the Association membership shall be held for the purposes of electing a Board of Directors and establishing procedures for the proper functioning of the Association.

ARTICLE V

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, and each easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions.

(a) The right of the Association to charge a reasonable admission and other fees for the use of the facilities situated on the Common Area;

(b) The right of the Association to limit the number of members and guests in the use of the Common Area;

(c) To make rules and regulations to determine the time and manner of use of the Common Area;

(d) The right of the Association to borrow money for the purpose of improving any of the Common Area and facilities, including without limitations those matters set forth under Article VI, Section 2, following, and in aid thereof to mortgage said property; provided however, that the Common Area shall not be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the lot owners, excluding the developer as a lot owner.

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(e) The right of the Association to suspend the voting rights of a member for any period during which any assessment against his Lot is delinquent, or during which a member is in violation of published rules and regulations adopted by the Association.

(f) The right of the Association to dedicate, transfer, or grant easements over 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 Association. No such dedication or transfer shall be effective unless an instrument signed by members, excluding the developer, entitled to cast two-thirds (2/3) of the votes hereof has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance of such dedication or transfer;

(g) The Association, by and through its Board of Directors, shall have the right to grant permits, licenses and easements over the common areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project, including future phases thereof. The Declarant, for itself, its successors and assigns, hereby retains an easement through, over and under the common areas for the purpose of ingress and egress or for such other purposes as may be necessary to complete construction of this and all future phases of Birdsong Estates.

Section 2. Delegation of Use. Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers, all of whom must reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successor and assigns, that it will convey fee simple title in and to the Common Area to the Association.

Section 4. Dissolution of the Association. In the event of dissolution of the Association, the assets shall be dedicated to

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a public body or conveyed to a non-profit organization with similar purposes.

Section 5. Examination of Books and Records.

(a) The Association shall be required to make available to a lot owner and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, other rules concerning Birdsong Estates, and the books, records and financial statements of the Association. "Available" means for inspection, upon request, during normal business hours or under other reasonable circumstances.

(b) Any holder, insurer or guarantor of a first mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting.

(c) Any financial statement request pursuant to Section (b) above shall be furnished within a reasonable time following such request.

Section 6. Professional Management Contracts. Any agreement for professional management of Birdsong Estates, whether it be by Declarant, its successors and assigns, or any other person or entity, may be terminated on ninety (90) days' written notice, and the terms of any such contract shall so provide and shall not be of a duration in excess of one (1) year.

ARTICLE VI

COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants and agrees to pay to the Association and each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) regular assessments or charges, to be collected either monthly, quarterly, or annually, and (2) special assessments for capital improvements or other purposes, such easements to be fixed, established, and collected from time to

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time as hereinafter provided. The regular and special assessments, together with interest, cost and reasonable attorney's fees, if delinquent, shall be a charge and a continuing lien upon the property against which the assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, if delinquent, shall be a charge and a continuing lien upon the property against which the assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, if delinquent, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due.

The Declarant shall not be required to pay assessments for any Lot in which it may hold an interest.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the benefit, health, safety, and welfare of the residents of the Property and for the improvement, maintenance and insurance on any of the Common Area, and for the maintenance of the amenities, sanitary sewers, and surface water drainage facilities, and for the maintenance of the fence and/or walls on the perimeter boundaries of the Property and landscaping associated with said perimeter walls or fence and any Common Area. Neither the Owner nor the Declarant shall have the right to receive back any assessment or contribution notwithstanding sale or other disposition of a lot(s).

Section 3. Regular Assessments. Beginning January 1, 1991, and until January 1, 1992, the maximum annual assessment shall not exceed \$120.00 per Lot. Thereafter, the regular assessment for each calendar year, and the basis for payment thereof, shall be determined by the Association at the annual meeting of the Association as called for in the Bylaws.

Section 4. Special Assessments. In addition to the assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement, including fixtures and personal property, provided

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that any such assessment shall have the affirmative vote of two-thirds (2/3) of the members in each class who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten (10) days, nor more than thirty (30) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Working Capital Assessment. In order to insure that the Association shall have cash available to meet the possibility of unforeseen expansion or to acquire additional equipment or reserves deemed necessary or desirable for enhancing and protecting the value, desirability and attractiveness of the property, a sum equal to \$150.00 for each lot shall be collected and paid to the Association at the time of closing of the sale of each Lot with Improvements. Such Working Capital Assessment shall be maintained in an account for the exclusive use and benefit of the Association. If not collected at such closing, the Working Capital Assessments shall be collected in the same manner as collection of a Regular or Special Assessment, all as provided herein. Amounts paid as working capital assessments are not to be considered as advance payment of regular assessment.

Section 6. Specific Assessments. In addition to the Regular Assessments and Special Assessments a provided above, the Association may levy a Specific Assessment against the Lot of a particular Owner's, which may not be uniform, should such Owner fail or refuse to maintain such portion of a Lot as is the responsibility of such Owner as is required in Article VIII, to follow. Collection of a Specific Assessment shall be in the same manner as collection of a Regular or Special Assessment, all as provided herein.

Section 7. Uniform Rate of Assessment. Both regular and special assessments must be fixed at a uniform rate for all Lots and may be collected on a yearly, quarterly or monthly basis.

Section 8. Quorum for any Action Authorized under Sections 3 and 4. At any annual or called meeting for the purposes set out in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast ten percent (10%) of all

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the votes of the membership shall constitute a quorum. If the required quorum is not present at any meeting, an adjourned meeting may be called, subject to any notice requirements set forth in Sections 3 and 4 hereof, and the required quorum of any such adjourned meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such adjourned meeting shall be held more than sixty (60) days following the preceding meeting.

Section 9. Date of Commencement of Annual Assessments: Due Dates. The regular assessments provided for herein shall commence and shall be due as to each Lot on the first day of the month following the conveyance of the Common Area. For subsequent years, the annual assessment and basis for payment shall be fixed at the annual meeting of the Association. The annual assessment period shall be from January 1 to December 31st of the following year. The Association shall, upon request, furnish a certificate, in writing signed by a representative of the Association, setting forth whether the assessments on a Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent and shall be a continuing lien upon the Lot(s) until paid. If the assessment is not paid within fifteen (15) days after the due date, the assessment shall bear interest from the due date at the rate set by the Association, plus a late charge equal to Ten Dollars (\$10.00) or such other sum as the Association shall set. For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Lot Owner grants the Board of Directors of the Association irrevocably the power to sell his or her unit at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded mortgage or deed of trust upon the Lot. The Association is hereby authorized to take any and all courses of action available to them for collection of the assessment

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which the laws of the State of Tennessee allow. Any such sale shall be made after first advertising the sale of said property for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of Shelby, State of Tennessee, giving notice of the time and place of each sale and by written notice of the time and place of such sale of the Lot. Any sale of the Lot to enforce the lien for delinquent unpaid assessments shall be free from equity right of redemption, or statutory right of redemption, homestead and dower and all other exceptions, all of which are hereby expressly waived by Lot Owners; in any such sale the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the property and the expenses of litigation, attorneys' fees, and sales commissions; and second to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust; and third, to the payment of all amounts due the Association under the provisions of this Declaration and Bylaws, and the balance, if any, to the Lot Owner whose Lot is sold.

All rights, remedies and privileges granted to the Board of Directors or a Lot Owner, pursuant to any terms, provisions and covenants or conditions of the Declaration and Bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party by the Declaration and Bylaws or at law or in equity.

The Association shall notify the holder of the first mortgage on any Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and any other case where the Owner of such Lot is

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in default with respect to the performance of any other obligation hereunder for a period in excess of sixty (60) days.

Section 11. Subordination of the Lien to First Mortgage.

The lien for assessment created hereunder upon any Lot shall be subject and subordinate to the lien of any first mortgage or deed of trust. The holder of a first mortgage who comes into possession of any Lot pursuant to the remedies provided in said deed of trust (whether by way of foreclosure of the trust deed or deed (or assignment in lieu of foreclosure) shall take the property free of any claims for unpaid assessments or associational charges against the mortgaged unit which accrued prior to the time such holder came into possession of the unit; provided that after the foreclosure of any such mortgage, or after the granting of any deed of assignment in lieu of foreclosure, there may be a lien created on the interest of such purchaser, grantee, or assignee to secure all subsequent assessments, whether regular or special, which may be assessed hereunder to such purchaser, assignee, or grantee as an Owner; and such subsequent assessment lien shall have the same effect and be enforced in the same manner as provided herein. Sale or transfer of any units shall not affect the assessment lien; however, the sale or transfer of any unit pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such foreclosure sale or deed or assignment in lieu thereof; provided, however, the lien shall continue and attach to any proceeds from any foreclosure sale in excess of the debt or claim made by the holder of such first mortgage which might be due the owner under the mortgage of the unit being foreclosed.

No sale or other transfer of a lot (other than ones in lieu of foreclosure of a recorded first mortgage) shall relieve such Lot from liability for any assessment or for the lien thereof and no foreclosure (or transfer in lieu thereof) of any other deed of trust or mortgage shall relieve any Lot Owner from personal

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liability for assessments recorded prior to such foreclosure or transfer in lieu thereof.

Section 12. Priority of Lien. The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

(a) General and special assessments for real estate taxes on a Lot; and

(b) The liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the Lot prior to the assessment of the lien thereon or duly recorded on said Lot after receipt of a written statement from the Board of Directors reflecting that said liens were current as of the date of recordation of said deed of trust, mortgage instrument or other encumbrance.

Section 13. Exempt Property. The following property shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; and (b) the Common Area.

ARTICLE VII

MAINTENANCE

1. The Association shall provide all maintenance and pay all expenses associated with the Common Area, including any fences, landscaping or walls (brick or wood) thereon. The real property taxes on the Common Area, if any, shall also be paid for by the Association. The Association shall also pay for maintenance and repair for the sanitary sewer and surface water drainage facilities and for all insurance expense associated with the Common Area, unless a governmental authority agrees to pay for such maintenance and repair.

ARTICLE VIII

USE RESTRICTIONS

The said lots of Birdsong Estates are restricted to those uses permitted as set forth in Section 3 of Page 3 of the Birdsong Estates plats referred to herein.

ARTICLE IX

INSURANCE

There is imposed on the Owner of each Lot the obligation to carry in full force and effect on said dwelling casualty insurance in limits for the replacement value thereof, as directed by the Association Board of Directors. Insurance on the Common Area shall be carried and paid for by the Association.

The right is given to the Association to require the Owner of a damaged or destroyed dwelling to make repairs or replacement in order to restore the dwelling to its condition prior to the damage or destruction, including the right to require that insurance proceeds paid to the Owner because of said damage or destruction be applied to the repair or replacement.

ARTICLE X

MORTGAGEE'S RIGHTS

(a) A first mortgagee of any Lot, at his request, is entitled to written notification from the Association of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations under the Declarations, Covenants, Conditions and Restrictions, or the Bylaws, which is not cured within sixty (60) days.

(b) Any first mortgagee of a Lot who comes into possession of the Lot 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 Lot, which accrue prior to the time such holder comes into possession of the Lot (except for claims for a pro rata share of such assessments or charges resulting from a pro rate reallocation of such assessments or charges to all Lots, including the mortgaged Lot).

(c) Unless all of the first mortgagees of Lots have given their prior written approval, the Association shall not be entitled to:

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(1) Change the pro rate interest or obligations of any Lot for purposes of levying assessments or charges or allocating distribution of condemnation awards.

(2) Abandon or terminate the project except where abandonment or termination is provided by law in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain.

(d) First mortgagees shall have the right to examine the books and records of the Association and/or the project.

(e) An adequate reserve fund for the replacement of Common Areas and Improvements will be established and funded by regular monthly payments other than by special assessments.

(f) No Lot Owner, or any other party, shall have priority over any rights of the first mortgagees of Lots pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or taking of Lots and/or Common Areas.

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

(h) 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.

(i) No Lot in the project may be partitioned or subdivided without the prior written approval of the holder of any first mortgage lien on such Lot.

(j) In the event of substantial damage to or destruction of any Improvements of any part of the Common Areas, the institutional holder of any first mortgage on a Lot will be entitled to timely written notice thereof.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed this 15th day of May, 1989.

BIRDSONG ESTATES,

BY: [Signature]
DEWEY G. PRICE, JR., Declarant

STATE OF TENNESSEE)
COUNTY OF SHELBY)

On this 15th day of May, 1989, before me personally appeared Dewey G. Price, Jr., with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Declarant herein, and that such Declarant, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing his name as such Declarant.

WITNESS my hand and Notarial Seal at office the day and year above written.

[Notary Seal]
PUBLIC
My Commission expires:
6-19-91

[Signature]
Notary Public

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EXHIBIT A

A tract of land located in the County of Shelby, State of Tennessee, and being more particularly described as follows:

Development known as Birdsong Estates, as shown on plat of record in Plat Book 126, Page 66, in the Shelby County Register's Office.

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CHARTER OF

BIRDSONG ESTATES HOMEOWNER'S ASSOCIATION, INC.

The undersigned natural person, having capacity to contract and acting as the Incorporator of a corporation under the Tennessee Non-Profit Corporation Act, adopts the following Charter for such corporation:

- 1. The name of the corporation is Birdsong Estates Homeowner's Association, Inc.
- 2. The duration of the corporation is perpetual.
- 3. This corporation is a mutual benefit corporation.
- 4. The address of the registered office of the corporation in the State of Tennessee, shall be:

5878 Stage Road
Bartlett, Shelby County, Tennessee 38134-4568

- 5. The name of the corporation's initial Registered Agent to be located at its registered office is Dewey G. Price, Jr.
- 6. The name and address of the Incorporator of this corporation is:

Dewey G. Price, Jr.
5878 Stage Road
Bartlett, Shelby County, Tennessee 38134-4568

- 7. The address of the principal office of the corporation is:

5878 Stage Road
Bartlett, Shelby County, Tennessee 38134-4568

- 8. The corporation is not for profit.
- 9. The purposes for which the corporation (hereafter called "Council of Owners") is organized are:

To provide for maintenance, preservation and architectural control of the dwellings and lots within a tract of land situated in Memphis, Shelby County, Tennessee, as shown in plat of record in Plat Book 126, Page 66, in the Register's Office of Shelby County, Tennessee, and to promote the health, safety, and welfare of the residents within the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of the Association for this purpose, to:

a. Exercise all of the powers and privileges and perform all of the duties and obligations of the Council of Owners as set forth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration," and Bylaws applicable to the property and recorded or to be recorded in the Office of the Register, Shelby County, Tennessee, as the same may be amended from time to time as therein provided.

b. Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration, to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Council of Owners, including all licenses, taxes or governmental charges levied or imposed against the property of the Association.

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c. Acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Council of Owners.

d. Have and to exercise any and all powers, rights, and privileges which a corporation organized under the provisions relating to corporations not for profit of the Tennessee Non-Profit Corporation Act by law may now or thereafter have or exercise.

10. This corporation is to have members. Every person or entity who is a record Owner of a Lot in Birdsong Estates Subdivision shall be a member of the Council of Owners. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Council of Owners.

11. Dissolution: In event of dissolution of this Corporation, to the extent allowed under applicable law, all of the assets of the Corporation shall be distributed equitably among the members of the Corporation, as shall be determined by the Board of Directors.

12. Other provisions:

a. Members of the Council of Owners shall be entitled to cast one (1) vote for each Lot interest owned by them. Declarant shall be entitled to six (6) votes for each Lot in which it holds the interest until such time as seventy-five percent (75%) of the Lots are sold, or until three (3) years of the date of recording of the Declaration of Covenants, Conditions, and Restrictions for Birdsong Estates Subdivision, whichever shall first occur, after which time, Declarant shall be entitled to one (1) vote for each Lot owned and unsold.

b. The affairs of this Council of Owners shall be managed by a Board of Directors of not less than two (2) nor more than five (5) Directors, who need not be members of the Council of Owners. The number of Directors may be changed by amendment of the Bylaws of the Council of Owners. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

President:

Secretary:

At each annual meeting, the members shall elect not less than two (2) nor more than five (5) Directors for a term of one (1) year each.

c. Amendment of these Articles shall require the assent of seventy-five percent (75%) of the entire membership.

Incorporator:


Dewey G. Price, Jr.

This Instrument Prepared By:
Griffin, Clift & Burns
855 Ridge Lake Blvd., Suite 102
Memphis, Tennessee 38119

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BYLAWS FOR THE ADMINISTRATION
OF
BIRDSONG ESTATES
HOMEOWNERS ASSOCIATION, INC.

These Bylaws are set forth for the administration of The
Birdsong Estates Homeowners Association, Inc.

ARTICLE I.

COUNCIL OF OWNERS

Section 1. Membership. All of the owners of lots in
Birdsong Estates as shown in plat of record in Plat Book 126,
Page 66, in the Shelby County Register's Office as may be revised
and be amended to include additional development shall constitute
the Council of Owners and be members of the Association.

Section 2. Purpose. The purpose of the Council of Owners
is to administer on a nonprofit basis, through a Board of
Directors, Birdsong Estates Homeowners Association, Inc.; to
elect the Board of Directors; to amend and supplement from time
to time these Bylaws and the system of Administration; and to do
and perform any and all other things, matters, or acts required
by or permitted by the owners or the laws of the State of
Tennessee.

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ARTICLE II.

MEETINGS AND VOTING RIGHTS OF OWNERS

Section 1. Eligibility. The owner or owners of a lot, who have become such in compliance with all the requirements and conditions contained in the Declaration of Covenants, Conditions and Restrictions, including these Bylaws and corporate Charter for Birdsong Estates Homeowners Association, Inc., shall be entitled to attend and vote at all meetings of the Council of Owners. The Declarant shall be considered the owner of each lot which is unsold by it.

Section 2. Voting Rights. The owner or owners of a lot shall be entitled to one (1) vote at all meetings of the Council of Owners. Where two or more persons own a lot, the vote allocated to that lot shall be cast by the one authorized by such two or more owners, and in the event of failure of such authorization, no vote shall be recorded for that lot. Where only one of two or more owners of a lot is present in person at a meeting, the Owner present shall be presumed to be authorized by all owners of such lot and shall be entitled to cast the vote with respect to that lot. Where one person or group of persons owns more than one lot, such person or group shall be entitled to cast one vote for each lot owned.

Section 3. Corporation as Owner. In the event a partnership, trustee, corporation or other entity owns a lot or lots, after having complied with all conditions contained in the Declaration, including these Bylaws, the vote of such may be cast by a partner, trustee or officer of the same or by any person

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authorized in writing by a partner, trustee or officer thereof, to represent the same.

Section 4. Proxies. Votes may be cast in person or by proxy. Proxies, to be valid, shall be in writing for the particular meeting designated therein and any adjournments thereof and shall be filed with the secretary of the meeting prior to voting.

Section 5. Annual Meetings. The annual meeting of the Association shall be held at 7:00 o'clock p.m. on the first Monday in March of each year, beginning in 1990, or on such other day chosen by a majority of the owners of lots, for the purpose of electing a Board of Directors and of transacting any other business authorized to be transacted by the members; provided, however, that if such day is a legal holiday, then the meeting shall be held at the same hour on the next following Monday.

Section 6. Special Meetings. Special meetings of the Council of Owners shall be held whenever called by the President and Secretary of the Board of Directors, by a majority of the Board of Directors or by the written request of one-third (1/3) of the entire membership of owners. When a special meeting is so called, the Secretary shall mail or deliver written notice of the meeting to all owners.

Section 7. Notice. Notice shall be given to all owners of meeting of owners, stating the time, place and purpose of which the meeting is called. Such notice shall be in writing and shall be mailed or delivered to each member at his address as it appears on the books of the association, or may be mailed or delivered to his lot, not less than ten (10) days nor more than

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fifteen (15) days before the meeting. Proof of such mailing or delivery may be given by the written statement of the secretary or other person giving the notice. Notice of a meeting may be waived before, at or after the meeting.

Section 8. Quorum. A quorum at any meeting of the Council of Owners shall consist of persons entitled to cast at least ten percent (10%) of the votes of the entire number of lot owners. The affirmative vote of a majority of owners present, being more than fifty percent (50%) of the total number of lots in attendance, is required to adopt any resolution, elect any director, make any decision or take any action; except that these Bylaws and the system of administration may be modified only in the manner hereinafter set forth.

Section 9. Presiding Officer. The President of the Board of Directors shall preside over all Council meetings; and the Secretary of the Board of Directors shall take and keep the minutes and minute books of all Council meetings, wherein adopted resolutions shall be recorded, and shall serve as Secretary at such meetings.

Section 10. Amendments. The Council of Owners may, at any duly called, held and convened meeting, modify or amend the system of administration of Birdsong Estates Homeowners Association, Inc. and these Bylaws for the administration of Birdsong Estates Homeowners Association, Inc. by the affirmative vote of owners representing at least seventy-five percent (75%) of the total lots in Birdsong Estates Homeowners Association or as otherwise provided for in the Declaration of Covenants, Conditions and Restrictions as recorded in the Register's Office

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of Shelby County, Tennessee for Birdsong Estates Homeowners Association (hereinafter "Declaration"). The system of administration and these Bylaws, however, may only be amended so that all of the provisions required by the Tennessee Code Annotated shall be within the contents of the Bylaws or no such modification or amendment of a system of administration or of these Bylaws shall be operative unless and until it is embodied in a written instrument and is recorded in the Register's Office of Shelby County, Tennessee, in the same manner as was the Declaration and these original Bylaws which are a part of the said Declaration.

ARTICLE III.

BOARD OF DIRECTORS

Section 1. Administration. The Administration of Birdsong Estates Homeowners Association, Inc., its business and affairs and of the general common elements therein shall be vested in its Board of Directors, which shall consist of not less than two (2) nor more than five (5) persons. Except for the initial members of the Board of Directors, each member of the Board of Directors shall be either the owners of a lot or of an interest therein, or, in the event of ownership of a lot by a partnership, trustee, corporation or other entity, a partner, trustee, officer or other designated representative thereof.

Section 2. Election of Directors. The Council of Owners shall, at its annual meeting, elect the Board of Directors. Each owner or owners of a lot shall be entitled to vote as provided in the Declaration, with no cumulative voting. A majority of those voting shall be necessary for the election of a Director. Each

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owner or owners of a lot, on each ballot, is required to cast his vote for as many persons as there are Directors to be elected. In the event a sufficient number of persons fails to receive a majority of votes, additional ballots will be taken with the name of the person receiving the lowest number of votes being dropped after each ballot, until a sufficient number of Directors is elected.

Section 3. Vacancies. Vacancies in the Board of Directors may be filled until the date of the next annual meeting by the remaining Directors.

Section 4. Term. The term of each Director's service shall extend until the next annual meeting of the Council of Owners and thereafter until his successor is duly elected by the Council of Owners and qualified or until he is removed in the manner elsewhere provided.

Section 5. Organization Meeting. The organization meeting of a newly elected Board of Directors shall be held within three (3) weeks of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary, providing a quorum shall be present.

Section 6. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, by a majority of the Board. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph at least five (5) days prior to the day named for such meeting, unless such notice is waived.

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Section 7. Special Meetings. Special meetings of the Board may be called by the President and must be called by the Secretary at the written request of a majority of the members of the Board. Not less than five (5) days' notice of the meeting shall be given, personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

Section 8. Waiver of Notice. Any Director may waive notice of a meeting before, at or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

Section 9. Quorum. A quorum at Directors' meetings shall consist of the Directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except as otherwise provided in the Declaration or elsewhere in these Bylaws. If, at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting until a quorum is present. At an adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 10. Presiding Officer. The President of the Board of Directors shall preside at all meetings of the Board; the Secretary of the Board shall serve as Secretary of all meetings, designate one of their number to preside or to serve as Secretary, as the case may be.

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Section 11. Compensation. No compensation shall be paid to any member of the Board or to any officer for services as such, unless approved by a majority of owners. Any member of the officer may be reimbursed for expenses actually incurred by him, upon approval by the Board.

Section 12. Removal. Any member of the Board may be removed by the vote of owners representing a majority of the total of lots at any regular or special meeting of the Council of Owners. The vacancy created by such removal may be filled by the Council of Owners at the meeting at which such Director was removed.

ARTICLE IV.

OFFICERS

Section 1. Generally. The Board of Directors shall elect, from its members, a President, Vice President, Secretary and Treasurer.

Section 2. President. The President shall be the chief administrative officer of the Board and shall execute contracts and agreements in the name and on behalf of the Board when directed by the Board. The President shall preside at all meetings and shall perform such other duties as the chief administrative officer as the Board may, from time to time, direct.

Section 3. Vice President. The Vice President shall, in the absence or disability of the President, preside at all meetings and perform all duties of the President.

Section 4. Secretary. The Secretary shall keep the minutes of all meetings and proceedings of the Association and of the

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Board of Directors. The Secretary shall serve all notice to the owners of meetings of the Association, and to the Directors of meetings of the Board of Directors. The Secretary shall keep all other records of the Association and of the Board. An Assistant Secretary may also be elected to perform the duties of the Secretary when the Secretary is absent; and

Section 5. Treasurer. The Treasurer shall have the custody of all property of the Board, including funds, securities, evidences of indebtedness, books, assessment rolls and accounts of the owners. The Treasurer shall keep in accordance with good accounting practice, and shall perform all other duties incident to the office of Treasurer.

ARTICLE V.

BOOKS AND RECORDS

Section 1. Money. All moneys and funds of the Association shall be deposited in such bank or banks as may be designated from time to time by the Board of Directors. Withdrawals of moneys from such accounts in banks shall be only by checks or drafts signed by such persons who are authorized by the Board of Directors. At least two signatures shall be required for any check or draft.

Section 2. Audit. Commencing December 31, 1989, an audit of the accounts and books of the Board of Directors shall be made annually by a certified public accountant, and a copy of the report shall be furnished to each owner not later than March 31st of the year following the year for which the report is made.

Section 3. Bonds. With the exception of the initial Board of Directors, fidelity bonds shall be required by the Board of

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Directors covering all officers and employees of the Board and any agents or managers handling or responsible for funds of the Association. The amount of such bond shall be determined by the Board of Directors, but shall be at least in the amount of the total annual assessments for common expenses. Premiums on such bonds shall be paid by the Board of Directors as a Common Expense.

Section 4. Procedure. Robert's Rules of Order (latest edition) shall govern the conduct of meetings of the Association and of the Board of Directors, subject to any paramount provisions of the statutes of Tennessee and provisions of the Declaration, including these Bylaws.

ARTICLE VI.

POWERS OF THE BOARD OF DIRECTORS

Section 1. Generally. In addition to the rights, powers and duties conferred upon the board of Directors by the Declaration, the laws of Tennessee and by other provisions of these Bylaws and without in anywise limiting the same, the Board of Directors shall have the following additional and cumulative rights, powers and duties:

A. To hold title and possession to funds and property, including the maintenance funds and other assessments and including title to any purchased lot or purchased leasehold interest pursuant to the powers herein conferred, as trustee for the use and benefit of the owners of lots;

B. To make and collect maintenance fund assessments against owners to defray the costs of the Association, including,

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without limitation, all costs and expenses of maintaining, repairing, replacing, improving, altering, operating and administering the improvements on the common area and the perimeter fence and any service to be provided under the Declaration, and of engaging all necessary services and employees therefor;

C. To use the proceeds of assessments in the exercise of its powers and duties;

D. To oversee the maintenance, repair, replacement, operation and administration of the improvements of the common area and any services to be provided to the individual lots under the Declaration;

E. To oversee the reconstruction of improvements after casualty and the further improvement of the property, including buildings and common area;

F. To make and amend regulations respecting the use of the property; including the buildings and common area;

G. To enforce by legal means, or otherwise, the provisions of the Declaration, including the Bylaws and the regulations for the use of the Property;

H. To contract for the management of the Association and to delegate to a manager the management duties of the Board of Directors, to be performed by such manager under the supervision of the Board of Directors;

I. To pay any taxes and assessments which are liens against any part of the property other than individual lots and the appurtenances thereto and to assess the same against the lot

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subject to such liens; and to oppose the levying of any such taxes;

J. To carry insurance for the protection of lot owners and the Board of Directors against casualty and liabilities;

K. To pay the cost of all power, water, sewer and other utility services rendered to the Association and not billed to owners of individual lots; and

L. To employ personnel to perform services required for proper administration of the Association, including, without limitation, auditors, attorneys, bookkeepers and managers.

ARTICLE VII.

VOTING

Section 1. Amount of Votes. Members of the Council of Owners shall be entitled to cast one (1) vote for each lot owned by them. Declarant shall be entitled to six (6) votes for each lot owned and unsold until such time as ninety percent (90%) of the lots are sold; or three (3) years from the date of recording of the Declaration, whichever shall first occur, after which time Declarant shall be entitled to one (1) vote for each Lot owned and unsold.

ARTICLE VIII.

INDEMNIFICATION

The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a Director or officer of Birdsong Estates

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Homeowners Association, Inc. against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

No indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of this duty to the Association, unless and only to the extent that the Chancery Court of Shelby County, Tennessee, or the Court in which such action or suit was brought, shall determine upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court shall deem proper. To the extent that a Director or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article, or in defense of any claim, issue or matter

therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under this Article (unless ordered by a Court) shall be made only as authorized in the specific case upon a determination that indemnification of the Director or officer is proper in the circumstances because he has met the applicable standard of conduct set forth herein. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who are not parties to such action, suit or proceeding, or (2) if such quorum is not obtainable, or even if obtainable a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or (3) by the Association.

Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized the the Board of Directors in the specific case upon a secured receipt of an undertaking by or on behalf of the Director or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized herein.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of the Council of Owners or disinterested Directors or otherwise, both as to an action in his official capacity and as to an action in another capacity while holding office, and shall continue as

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to a person who has ceased to be a Director or officer, and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE IX.

CONSTRUCTION

These Bylaws are intended to be read in conjunction with the Declaration, and if there is any conflict between the Bylaws and the said Declaration, the Declaration shall control.

Robert S. Brown

Secretary

corplocIV/a:bird-by

SHELBY COUNTY
REGISTER OF DEEDS

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|--------------------|-----------------------|
| BA 9344 | |
| No. | _____ |
| STATE TAX | _____ |
| REGISTER'S FEE | _____ |
| RECORDING FEE | 94.00 |
| TOTAL | _____ |
| STATE OF TENNESSEE | |
| SHELBY COUNTY | |
| GUY B. BATES | |
| REGISTER | |
| By | <i>[Signature]</i> OR |

ESK