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This Instrument Prepare By:

Dan E. Huffstutter

1211 Sixteenth Avenue South

Nashville, TN 37212

(615) 242-2000

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS
AND OWNERS ASSOCIATION
FOR
BYRON CLOSE**

This Declaration of Covenants, Conditions and Restriction are for a certain parcel of land in the 18th Councilmanic District of Nashville, Davidson County Tennessee between Byron Avenue and Richardson Avenue being a subdivision known as "Byron Close" containing approximately 1.995 acres of record in the Register of Deed's Office for Davidson County Tennessee as instrument number 20080918-0095442.

Recitals

Whereas, Byron Avenue 3501, LLC is the owner of the Property which shall be divided into eleven (11) Lots; and,

Whereas, Byron Avenue 3501, LLC desires to impose certain protective restrictions and covenants on the Property and each Lot.

Now Therefore, for good and valuable considerations, Byron Avenue 3501, LLC does hereby encumber all Lots on the Property with the following protective covenants, conditions and restrictions which will be embodied in any deed executed to convey title of each Lot.

1. Definitions. The following capitalized terms, as used in this Declaration, shall have the following meanings:

1.1 "Assessment" shall mean the financial obligation, common or special as authorized by the Board from time to time, levied against an Owner to provide the Association with the funds needs for the general purpose of maintaining Byron Close for the common benefit of the Owners. Expenses which benefit less than all the Owners may be specifically assessed against all Lot(s) which are benefited according to the benefit received. Expenses which benefit all Lots will be assessed equally against all Owners.

- 1.2 **“Association”** shall mean that not-for-profit corporation incorporated in the state of Tennessee as Byron Close Homeowners Association, Inc. (the initial text of the incorporation charter is set forth in **Attachment A** hereto) authorized and created pursuant to provision number 2 of this Declaration.
- 1.3 **“Board”** shall mean the governing body (a/k/a the board of directors) of Byron Close Homeowners Association.
- 1.4 **“Byron Close”** shall mean the subdivision established for the residential development of the Property.
- 1.5 **“By-Laws”** shall mean the by-laws of Byron Close Homeowners Association, the initial text of which is set forth in **Attachment B** hereto.
- 1.6 **“Common Expense”** shall mean and include:
- (a) all expenses of administration, maintenance, repair or replacement of the Common Properties;
 - (b) all expenses agreed upon as a Common Expense by the Association;
 - (c) all expenses declared as Common Expenses by the provisions of this Declaration; and,
 - (d) all other sums assessed by the Board pursuant to the provisions of this Declaration.
- 1.7 **“Common Properties”** shall mean and refer to those tracts of land and any improvements thereon (include but not be limited to streets, street lights, entrance and street signs, private drives, park areas, pond, medians in road ways, maintenance easement areas and landscaping easement areas) which are deeded to the Association and designated in said deed as ‘Common Properties’ and shall also include any personal property acquired by the Association. All Common Properties are to be devoted to and intended for the common use and enjoyment of the Owners and persons occupying Dwelling of an Owner either as a guest or on a tenant basis.
- 1.8 **“Covenants”** shall mean the covenants, restrictions, conditions, easements, charges, assessments, and affirmative obligations as set forth in the Declaration.
- 1.9 **“Declarant”** shall mean Byron Avenue 3501, LLC the owner of the Property.
- 1.10 **“Declaration”** shall mean this document (and any amendment or modification filed pursuant to the terms hereof) being the declaration of covenants, conditions and restrictions which establishes, promulgates and declares that the Property shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to each and every covenant, condition, restriction, limitation, reservation, exception, equitable servitude and other provision set forth in this Declaration for the duration of the term of the Declaration.
- 1.11 **“Director”** shall mean a individual member of the Board.
- 1.12 **“Dwelling”** shall mean the single family personal residential house constructed on a Lot.

1.13 “Lot” shall mean and refer to any improved or unimproved parcel of located on the Property intended for a single family residential structure.

1.14 “Lots” shall mean the eleven (11) residential building lots located on the Property.

1.15 “Member” / “Members” shall mean any and all Owner / Owners of a Lot / Lots.

1.16 “Officer” shall mean that person who appointed by the Board to perform the duties of the Association office as specified in the Bylaws.

1.17 “Owner” shall mean the person or entity shown on the public records as owner of the Lot.

1.18 “Owners” shall mean the Owners collectively.

1.19 “Property” shall mean the real property in Nashville, TN described as follows:

Beginning at an iron pipe found at the intersection of the easterly margin of Ransom Avenue (50' right-of-way) and the southerly margin of Byron Avenue (50' right-of-way);

Thence with the southerly margin of Byron Avenue, North 63 Degrees 13 Minutes 39 Seconds East a distance of 218.96 feet to an iron pin set in the westerly right-of-way of interstate highway 440 (“I-440”);

Thence with the westerly right-of-way of I-440, the following two calls:

South 83 Degrees 36 Minutes 42 Seconds

East a distance of 7.18 feet to an iron pin set;

Thence South 27 Degrees 02 Minutes 19 Seconds East a distance of 365.26 feet to an iron pin set in the northerly margin of Richardson Avenue;

Thence with the northerly margin of Richardson Avenue, along a curve to the right having a radius of 547.96 feet through a central angle of 08 Degrees 28 Minutes 10 Seconds, an arc distance of 81.00 feet, said curve having a chord direction of South 48 Degrees 52 Minutes 00 Seconds West and a chord length of 80.93 feet to an iron pin set;

Thence continuing with the northerly margin of Richardson Avenue, South 62 Degrees 21 Minutes 36 Seconds West a distance of 146.00 feet to a PK nail set in the sidewalk at the intersection of the northerly margin of Richardson Avenue and the easterly margin of Ransom Avenue;

Thence with the easterly margin of Ransom Avenue, North 27 Degrees 06 Minutes 23 Seconds West a distance of 391.47 feet to the Point of Beginning.

1.20 “Rules and Regulations” shall mean those certain rules and regulations established by the Board, from time to time, as it deems reasonably necessary for the general purposes of regulating Byron Close for the common benefit of the Owners.

2. **Byron Close Homeowners Association.**

2.1 **Authorization.** The creation and operation of the Association, pursuant to this Declaration is hereby authorized. The Association has been formed as a Tennessee

corporation under the Tennessee Non-Profit Corporation Act, with duties, powers and rights conferred in this Declaration and in the Association's Charter and Bylaws.

2.2 Board. The affairs of the Association shall be managed by the Board, which shall consist of three (3) Directors. Notwithstanding any provision of this Declaration to the contrary, until such time as Declarant owns less than three (3) Lots, including undeveloped Lots, in Byron Close, then the Declarant shall have the right to appoint two (2) of the three (3) Directors. Subject to the foregoing, the number, the term, election and qualifications of the Board shall be fixed in the Bylaws.

2.3 Membership. Every person or entity who is Owner of a Lot is subject to this Declaration and shall be deemed to have a membership in the Association. The foregoing is not intended to include and shall not include any person or entity who holds an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Member's membership. No Owner, whether one or more persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and such membership shall automatically pass with fee simple title to the Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote be cast for each Lot owned.

3. Association's Duties and Powers. The Association has been formed to further the common interests of the Owners. The Board shall have the duties and powers hereinafter set forth and shall perform those powers and duties to further the common interests of such Owners and to repair, maintain, improve and enhance the attractiveness, desirability and safety of Byron Close. The Association shall accept title to any property, including any improvements thereon and personal property, transferred to the Association by Declarant, together with the responsibility to perform any and all administrative functions associated therewith, provided that such administrative functions are not inconsistent with the provisions contained in this Declaration. Any property transferred to the Association by Declarant shall be unencumbered by any mortgage and shall not impose any unreasonable or special burden on the Association other than the normal burdens of ownership of property.

3.1 Managerial. The Association shall manage, operate, care for, maintain and repair all Common Properties and keep them in a safe, attractive and desirable condition for the use and enjoyment of the Owners. The Association shall have a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary under the Declaration for the proper performance of its duties hereunder and the proper maintenance and operation of the Common Properties.

3.2 Insurance. The Association shall keep and maintain in full force and effect at all times

(subject to such deductible provisions as good practice may dictate) insurance obtainable by the Association for:

3.2.1 Casualty. Casualty, fire and extended coverage liability insurance with respect to all insurable improvements and personal property owned by the Association;

3.2.2 Liability. Broad form comprehensive liability insurance covering public liability for bodily injury and property; and,

3.2.3 Director. Director insurance with such fidelity and indemnity protection as the Association shall deem necessary or desirable.

3.3 Financial. Association shall:

3.3.1 Budget. Prepare an annual budget for the operation of the Association and provided a copy of the same to each Owner;

3.3.2 Assessments. Levy an Assessment against Owners, which shall be deemed a lien against the Lot and ad debt of the Owner until paid, and to collect each Assessment.

3.3.3 Investments. Invest its funds as a reasonable rate of return given its need for liquidity.

3.4 Rules & Regulations. The Board may, without the consent of the Owners, establish such rules and regulations as it deems reasonably necessary for the general purposes of regulating Byron Close for the common benefit of the Owners. The initial text of the rules and regulations are set forth in **Attachment C** hereto. In the event of a violation of any rule and/or regulation, the Association, as authorized by the Board, can take reasonable actions, judicial or otherwise, to enforce its rules and regulations, including imposition of fines for a violation.

3.5 Agents. The Association has the power and right to retain and pay for the services of any agent, as the Board may deem necessary or desirable, in connection with the performance of any duties of or exercise of any powers of the Association.

3.6 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Tennessee nonprofit corporation, subject only to such limitations as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do and perform any and all acts, which may be necessary or desirable for or incidental to, and to do any and all lawful things which may be authorized required or permitted to be done under this Declaration, or under the Charter, Bylaws or Rules and Regulations.

3.7 Dissolution. In the event of the dissolution of the Association, all Common Properties shall be divided into eleven (11) equal shares (to the extent possible) with one (1) share distributed to the then Owner of each Lot.

3.8 Bioretention Pond. Byron Close has a single storm water detention pond that includes two bioretention areas for water quality. The water quality bioretention areas are designed to pond six (6) inches of water for duration of 48 hours. The Association shall inspect and maintain the bioretention pond.

3.8.1 Pond Maintenance.

- 3.8.1 The pre-cast outlet structures, headwalls, and outlet pipes shall be inspected annually for cracks, corrosion, or displacement. Any damage to the structures is to be included in the annual report, and repaired as necessary.
- 3.8.2 The outlet box structures and outfall pipes shall be inspected for sediment buildup annually. Any sediment found shall be removed and disposed of properly,
- 3.8.3 The outfall pipes, k-grates, and outfall structure are to be inspected annually and after large storm events for obstructions and erosion. Any obstructions are to be removed and disposed of properly. Erosion is to be corrected as necessary.
- 3.8.4 The pond is to be checked annually for excessive sedimentation buildup, and any excess is to be removed and disposed of properly,
- 3.8.5 Vegetation around and within the pond area is to be inspected monthly. Vegetation is to be trimmed and removed as appropriate. Any undesirable vegetation or woody plant growth is to be removed.
- 3.8.6 The pond should be inspected monthly for any hazards to the public. Any complaints from Owners should be addressed as well.
- 3.8.7 The pond embankments should be inspected annually and after large storm events. Inspection should include: checking vegetation if it is healthy; erosion; animal burrows; cracking, sliding, or bulging of dam or retaining wall; leaks or seeps; and slope protection. Any damage should be noted and repaired as necessary.

3.8.2 Bioretention Area Maintenance.

- 3.8.1 Cleanout riser pipes shall be inspected annually for cracks, corrosion, or displacement. Any damage to the cleanouts is to be included in the annual report, and repaired as necessary.
- 3.8.2 Gravel diaphragm and flow spreader are to be checked annually. Any damage is to be included in the annual report, and repaired as necessary. Erosion is to be corrected as necessary.
- 3.8.3 The bioretention area is to be checked monthly and after large storm events for evidence of erosion. Any problems found are to be noted and repaired as necessary.
- 3.8.4 The bioretention area is to be checked annually to see if the upstream area is fully stabilized and is not eroding into the bioretention area.
- 3.8.5 Vegetation around and within the bioretention areas are to be inspected monthly. Vegetation is to be trimmed and removed as appropriate. Mulch and vegetative ground cover to be checked to ensure adequate coverage is maintained. Any dead vegetation or trees are to be replaced as shown on the approved landscaping plan.
- 3.8.6 The bioretention areas should be inspected monthly for any hazards to the public. Any complaints from residents should be addressed as well.
- 3.8.7 The bioretention area shall be inspected after large storm events to check if there is any standing water longer than forty-eight (48) hours after the storm.

3.8.8 The bioretention area embankments shall be inspected annually for structural stability. Inspection should include: checking erosion; animal burrows; leaks or seeps; and slope protection. Any damage should be noted and repaired as necessary.

3.8.3 Sediment and Trash Disposal:

1.4.1 Sediment clean of pollutants can be used as fill material, cover, or disposed of at the designated sediment disposal area. In any case, the sediment is to be placed in such a way that it will not allow re-suspension into storm water runoff.

1.4.2 Sediment that has somehow become contaminated shall be disposed of properly. For disposal of such material; the Metro Stormwater Management Manual, Volume 4, CP-09 or the Tennessee Department of Environment and Conservation should be consulted.

1.4.3 Non-Hazardous trash should be disposed of in the local dump.

3.9 **Sight Triangle.** The Common Property located at the intersection of Ransom Avenue and Richardson Avenue will be monitored and maintained in a clear manner for visual clearance.

4. **Residential Use.** A Lot can only be used for single family residential purposes and shall not be used for any business or commercial purpose.

4.1 **Sub-Dividing.** No Lot can be divided.

4.2 **Utility Easement.** A perpetual easement is reserved for utility installations and maintenance in accordance with the utility easements designated on the plat of record for Byron Close. A perpetual easement is reserved on each Lot (as shown on the plat) for construction and maintenance of utilities (gas, electricity, water, cable) and no structure of any kind shall be erected or maintained upon or over said easement.

4.3 **Water Drainage.** Owner covenants and agrees to properly maintain all stormwater drainage features and grades on his/her/its Lot as set forth on the engineering drawings and plat for Byron Close and not to obstruct, re-divert or relocate the existing drainage patterns without proper official written authorization.

4.4 **Occupancy.** No part of any Lot shall be used for residential purposes prior to the issuance of a 'use and occupancy' permit for the Dwelling.

4.5 **Building Requirements.** The entire exterior of any Dwelling must be approved in writing by the Declarant and be in accordance with the Metropolitan Historic Commission overlay on the Property.

5. **Obligations of Owner.** The Owner of the Lot shall be responsible for the following:

5.1 **Appearance.** The Dwelling having a frontal appearance from the main street in accordance with the requirements of the Association and in conformity with the Metropolitan Historic Commission overlay on the Property.

5.2 **Unightly Conditions.** Maintaining the Lot in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs, rocks and other debris being removed when needed).

5.3 **Offensive Activity.** Not permitting noxious or offensive activity to be carried on upon

the Lot nor permitting anything done on the Lot which may be or become an annoyance, discomfort, embarrassment or nuisance as determined by the Association.

5.4. Animals. Keeping only personal dogs, cats and other household pets on his/her/their Lot and not allowing the pets to roam Byron Close unattended. In the event of a dog consistently barking or if barking persists, then the dog shall be muzzled. If the pet owner refuses or the barking persists, then the barking shall be deemed an offensive activity.

5.5 Destruction. Preserving the aesthetic and economical value of the Lots requires that Owner shall have the affirmative duty to rebuild, replace, repair or clear and landscape (within a reasonable time) in the event of any improvement or vegetation on a Lot shall be significantly damaged or destroyed by any casualty.

5.6 Vehicle Parking. No inoperable vehicle (or other machinery) shall be stored outside on the Lot at any time. Recreational vehicles must be stored (hidden from view) within the garage and may not be stored anywhere else on the Lot. Street parking should be of limited duration and not in excess of twelve (12) hours without the vehicle being moved.

5.7 Maintenance. Maintaining the Dwelling, driveway, landscaping and all other improvements on the Lot in good repair and in good and presentable appearance; and, keeping the Lot's lawn fully seeded with grass, regularly fertilized, cut and weeded.

5.8 HVAC Units. The air conditioning and heating unit(s) for the Dwelling being architecturally screened or landscaped so as not to be visible from any street.

5.9 Trash. The Owner's trash cans must remain in the rear of each Dwelling in a concealed or screened area except on the designated trash pickup day. Any hard surface path installed between or beside a Dwelling must be maintained and kept in an operable condition by the Owner

5.10 Complaints. Bring any complaints to the Board, in writing, signed and dated, and sending a copy of the complaint to each member of the Board, either electronically or by U.S. mail.

5.11 Notice of Sale or Lease. In the event an Owner sells or leases his/her/their Dwelling/Lot, then the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot/Dwelling and such other information as the Board may reasonably require.

5.12 Mailboxes. each Lot must install such mailbox for use by the Owner. Future replacement of a mailbox due to damage or destruction or for any other reason shall be with a mailbox of the same size, style and color.

6. General Provisions.

6.1 Duration. This Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Declarant or Owner, their respective legal representatives, heirs, successors and assigns, in perpetuity, unless amended or terminated as provided herein.

6.2 Amendment. This Declaration may be amended or modified, in any respect from time

to time, by the Declarant prior to the date when the governing authority for the Association is transferred from the Declarant to the Board in accordance with the Bylaws provided the use restrictions for single family residences remains. Thereafter, this Declaration may be amended in accordance with the following procedure:

6.2.1 Notice. An amendment to this Declaration may be considered at any annual or special meeting of the Association. If considered at an annual meeting, notice of consideration of the amendment and a general description of the terms of such amendment shall be included in the notice of the annual meeting as provided for in the Bylaws. If considered at a special meeting, similar notice shall be included in the notice of the special meeting provided for in the Bylaws.

6.2.2 Action. At any such meeting of the Members of the Association, the amendment must be approved by an affirmative seventy-five percent (75%) vote of those Owners who are in attendance or represented by proxy at the meeting. At any such meeting, the Declarant shall have the number of votes as provided in the Bylaws.

6.2.3 Effective. An amendment adopted this Section shall become effective upon its recording with the Office of the Register of Deeds of Davidson County, Tennessee. The President of the Association and Secretary of the Association shall execute, acknowledge and record the amendment and the Secretary shall certify on its face that it has been adopted in accordance with the provisions of this Section.

6.3 Indemnification. The Association shall indemnify every officer and director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or director, in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by then Board) to which he or she may be a party by reason of being or having been an Officer or Director. The Officers and Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The Officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association. The Association shall maintain adequate general liability and Officers' and Directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4 Book & Records. This Declaration, the Rules and Regulations, the By-Laws, the Association's minute book shall be made available for inspection and copying by a Director, Officer and Owner (and his/her/their duly appointed representative) upon advance written notice of five (5) business days with inspection to occur between the hours of 9:00 a.m. through 5:00 p.m.c.s.t. An Owner can require as audit of the accounts of the Association upon the condition that costs of said audit shall be borne by

the requesting Member unless the results of the audit reflect that the financial information for accounts and the same time period is materially different than the financial information provided by the Board to the requesting Member.

6.6 Streets. Ransom Avenue, shown on the plat of record for Byron Close, will be dedicated to the City of Nashville as public street. The private drives at the rear of the Residences will be a Common Property.

6.7 Construction. Invalidation of any one of these Covenants, by a court of record having jurisdiction, shall in no way affect any of the other Covenants which shall remain in full force and effect.

6.7.1 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

6.7.2 Captions. The captions are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Section or Sub-Section to which they refer.

6.7.3 Interpretation. This Declaration shall be construed in accordance with and under and pursuant to the laws of the state of Tennessee, and that venue for any action or other proceedings that may be brought arising out of, in connection with or by reason of this Declaration shall be Davidson County, Tennessee.

Signed as of the day and date set forth below the signature.

“Declarant”

Byron Avenue 3501, LLC



Kevin B. Smith, Secretary

Date: September 19, 2013